



Western Australia

Industrial Relations Act 1979

Industrial Relations Commission Regulations 2005

Industrial Relations Commission Regulations 2005

Contents

Part 1 — Preliminary

1.	Citation	1
2.	Commencement	1
3.	Terms used	1

Part 2 — The office of the Registrar

4.	Lodging documents	2
5.	Lodging and filing documents electronically	3
6.	Office of Registrar opening hours	4
7.	Procedure by Registrar	5
8.	Duties of Registrar in respect of applications	6
9.	Direction to Registrar to investigate and report	7
10.	Stamp of Commission	7
11.	Seal of Commission	7
12.	Publication of information and notices	8

Part 3 — Conduct of proceedings

Division 1 — Notice of application, response and parties

13.	Applications to Commission	9
14.	Response	10
15.	General form of objection	10
16.	Withdrawal or discontinuance of application	11
17.	Application to amend	11
18.	Joinder of parties	12
19.	Intervention	13

	Division 2 — Interlocutory proceedings	
20.	Discovery, production and inspection of documents	14
21.	Order for production to Commission	16
22.	Further particulars	16
23.	Notice to admit	17
	Division 3 — Service	
24.	Service	18
25.	Electronic address for service	19
26.	Service electronically	19
27.	Substituted service	20
	Division 4 — Conferences	
29.	Orders under sections 32 and 44	21
30.	Compulsory conference	21
31.	Memorandum following compulsory conference	22
	Division 5 — Conduct of hearings	
32.	Application for and notice of hearing	22
32A.	Proceedings may be determined on the papers	23
33.	Procedure before Commission	23
	Division 6 — General	
34.	Elimination of delays	25
35.	Electronic documents and communications	26
36.	Extension or abridgment of time	26
37.	Waiver of procedural regulations	27
38.	Non-compliance with regulations	27
39.	Practice	27
	Part 4 — Witnesses and evidence	
40.	Application for examination of witness	29
41.	Summons to witness	30
42.	Application to set aside witness summons	31
43.	Witness statements and outlines of evidence	31
44.	Evidence or submissions by video-link or telephone	33
45.	Disclosure of expert's report	34
46.	Exhibits	36
47.	Declarations and affidavits	36

Part 5 — Various applications under Act

48.	Application for award	37
49.	Application to vary area of operation of award	38
50.	Application to vary award	39
51.	Application for joinder of party to award	41
52.	Application for interpretation of award or industrial agreement	41
53.	Bargaining for industrial agreement	42
54A.	Orders as to specified matters on which agreement has not been reached	43
54.	Enterprise order	43
55.	Application for industrial agreement	44
56.	Retirement from industrial agreement	45
57.	Variation of industrial agreement by subsequent agreement	45
58.	Application to waive notice required for production of records	45
59.	Section 66 applications and directions	45
60.	Proceedings before Full Bench for enforcement of Act	46
60A.	Applications for equal remuneration orders	47
61.	Unfair dismissal and contractual benefit claims by employees	49
62.	Stop bullying or sexual harassment applications by workers	50
63A.	Application by employee or former employee under <i>Public Sector Management Act 1994</i>	51

Part 6 — Agents

63.	Appointment of agent	53
-----	----------------------	----

Part 6A — Delegation to Registrars

64.	Delegation to Registrars	55
65.	Time limits for review of decisions of Registrars	55

Part 7 — Organisations and industrial associations

66.	Registration of organisation	57
-----	------------------------------	----

67.	Registration of industrial association	57
68.	Amalgamation of organisations	58
69.	Alteration of rules	59
70.	Substitution of new set of rules	61
71.	Change of name	61
72.	Counterpart certificates	62
73.	Order as to whom employee organisation represents	64
74.	Summons for cancellation or suspension of registration of organisation or association	64
75.	Request by organisation or association for cancellation of registration	65
76.	Application by Registrar for cancellation of registration	65
77.	Certificates of registration	66
78.	Filing of records of organisation or industrial association	67
79.	Balance sheet etc. of organisation	67
80.	Inspection of documents	68
81.	Notification of change of address	68
82.	Right of entry — authority for representatives	68

**Part 8 — Applications and appeals
under Part VID Division 9 of the
Act**

Division 1 — Applications

83.	Establishing that proposed representative is qualified and consents to application under section 97WV or 97XM	71
84.	Notice of application for approval to be given to employer	71

**Division 2 — Appeals under section 97XB
or 97XQ of the Act**

85.	Appeal against refusal to give approval	72
86.	Service of appeal notice	72
87.	Person served entitled but not required to be heard	72
88.	Registrar to provide records to Commissioner	73

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

89A.	Terms used	74
89B.	Notice of appeal against removal action	74
89C.	Service of notice of appeal against removal action	74
89D.	Response by chief executive officer	75
89E.	Documents relied on to be filed and served	75
89F.	Notice of reformulated reasons under <i>Prisons</i> Act 1981 s. 110A(4)	76
89G.	Withdrawal or discontinuance of appeal against removal	77

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

89H.	Terms used	78
89I.	Notice of appeal against removal action	78
89J.	Service of notice of appeal against removal action	79
89K.	Response by chief executive officer	79
89L.	Documents relied on to be filed and served	80
89M.	Notice of reformulated reasons under <i>Young</i> <i>Offenders Act 1994</i> s. 11CL(4)	80
89N.	Withdrawal or discontinuance of appeal against removal	81

**Part 9 — Appeals under the *Police*
Act 1892 section 33P**

89.	Terms used	82
90.	Notice of appeal against removal action	82
91A.	Service of notice of appeal against removal action	82
91.	Response by Commissioner of Police	83
92.	Documents relied on to be filed and served	83
93.	Notice of reformulated reasons under <i>Police</i> Act 1892 s. 33R(10)	84
94.	Withdrawal or discontinuance of appeal against removal	85

Part 9C — Appeals under the *Police Act 1892* section 33ZI

94A.	Terms used	86
94B.	Notice of appeal against retirement on medical grounds	86
94C.	Service of notice of appeal against retirement on medical grounds	86
94D.	Response by Commissioner of Police	87
94E.	Documents relied on to be filed and served	87
94F.	Notice of reformulated reasons under <i>Police Act 1892</i> s. 33ZK(11)	88
94G.	Withdrawal or discontinuance of appeal against retirement on medical grounds	89

Part 9D — Disputes under the *Police Act 1892* Part 2D Division 3

94H.	Term used: Tribunal	90
94I.	Application of Part	90
94J.	Lodgment of dispute by medically retired member	90
94K.	Lodgment of dispute on behalf of medically retired member	90
94L.	Application of certain regulations	91
94M.	Procedures specific to Tribunal proceedings	92

Part 10 — Work Health and Safety Tribunal

95.	Term used: Tribunal	94
95A.	Application of Part	94
96.	Applications to Tribunal	94
97.	Application of certain regulations	94
98.	Procedures specific to Tribunal proceedings	95

Part 10A — Road Freight Transport Industry Tribunal

99A.	Terms used	97
99B.	Referrals to Tribunal	97
99C.	Application of certain regulations	97
99D.	Procedures specific to Tribunal proceedings	98

Part 11 — Appeals generally		
Division 1 — Appeals to Commission		
100.	Appeals under section 97VM	100
101.	Appeal under <i>Vocational Education and Training Act 1996</i>	100
102A.	Review of decisions of Construction Industry Long Service Leave Payments Board	101
Division 2 — Appeals to Full Bench		
102.	Appeals to Full Bench	102
103.	Procedure for listing matters before Full Bench	105
103A.	Discontinuance of appeal to Full Bench	106
Part 12 — Public service arbitration		
105.	Terms used	107
106.	Reclassification applications	107
107.	Public Service Appeal Board	107
108.	Nomination of agent for claim under s. 80E(2)	109
Part 13 — Railways Classification Board		
109.	Terms used	110
110.	Number of copies of documents for Board	110
111.	Classification appeals	110
112.	Nomination of agent for appeal of claim under section 80R(2)	111
113.	Conferences	111
114.	Chambers	111
115.	Service on Public Transport Authority	111
116.	Directions	111
Part 14 — Miscellaneous		
117.	Nomination of employees' representative	112
118.	Appeals from Boards of Reference	112
119.	Notice of certain orders	113
120.	Remuneration and reimbursement of expenses for members of constituent authorities	113
Notes		
	Compilation table	116

Contents

Other notes

119

Defined terms

Industrial Relations Commission Regulations 2005

Part 1 — Preliminary

1. **Citation**

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

2. **Commencement**

These regulations come into operation on 1 September 2005.

3. **Terms used**

In these regulations, unless the contrary intention appears —
Commission, in relation to proceedings, means the Commission as defined in the Act however constituted for the purpose of those proceedings;

electronic document means a document that exists in a digital form and is capable of transmission, storage and duplication by electronic means;

lodged electronically, in relation to a document, means the document is lodged under regulation 5(1) or received at the office of the Registrar by email;

Registrar includes a deputy registrar;

writing includes an electronic document.

[Regulation 3 amended: Gazette 5 Mar 2019 p. 585-6;
SL 2022/75 r. 4.]

Part 2 — The office of the Registrar

4. Lodging documents

- (1) All documents required to be filed or lodged under the Act or these regulations must be filed or lodged as the case requires in the office of the Registrar.
- (2) Subject to this regulation and regulations 5 and 6, documents required to be filed or lodged under the Act or these regulations must, unless in a particular case the Commission otherwise expressly approves, be lodged at a time when the office of the Registrar is open for business.
- (3) Where a document is required to be filed or lodged within a prescribed time and the office of the Registrar is not open for business on the last day on which it may be filed or lodged, it is taken to have been filed or lodged within time if it is filed or lodged on the next day that the office of the Registrar is open for business.
- (4) Every document required to be filed or lodged under the Act or these regulations and every copy for service must be in the form required by these regulations, clearly written or typed or reproduced on one side only with an adequate margin.
- (5) The Registrar is not to accept any document unless it has been fully and correctly completed in accordance with the Act and these regulations.
- (6) Appeal books lodged in relation to appeals under sections 49 and 84 of the Act are not documents for the purposes of subregulation (5).
- (7) Except where otherwise provided by these regulations or otherwise directed by the Commission, one copy of every document for the use of the Commission together with at least as many copies as there are parties must be filed or lodged in the office of the Registrar.

- (8) Where an application is received by the office of the Registrar for which a fee is prescribed for filing and the applicant does not pay the prescribed fee within 7 days from the date the application was received, the Registrar is to inform the applicant in writing of the requirement to pay the prescribed fee.
- (9) If the applicant does not pay the prescribed fee within 7 days after being informed under subregulation (8), the Registrar is to forward the application with a memorandum to that effect to the Chief Commissioner.

[Regulation 4 amended: Gazette 28 Apr 2006 p. 1651; 12 Oct 2010 p. 5153; 19 Dec 2018 p. 4837; 5 Mar 2019 p. 586.]

5. Lodging and filing documents electronically

- (1) Subject to the requirements of the Commission's website and this regulation a party may lodge an approved form electronically by completing the form on the Commission's website at <http://www.wairc.wa.gov.au>.
- (2A) Any requirement in these regulations for a signature does not apply if an approved form is lodged under subregulation (1).
- (2) A document sent by email to the office of the Registrar must be sent to an email address which is approved by the Registrar and published on the Commission's website and must —
 - (a) be in an electronic format approved by the Chief Commissioner; and
 - (b) be capable of being printed in the form and with the content visible on screen; and
 - (c) clearly state —
 - (i) the sender's name, postal address and telephone number; and
 - (ii) if applicable, the sender's document exchange number and email address; and
 - (iii) what the sender requests the Registrar do with the document.

[(3)-(5) deleted]

- (6) If a document is sent by email to the office of the Registrar but not in accordance with this regulation —
 - (a) the document is taken not to have been lodged at the office of the Registrar; and
 - (b) the Registrar must notify the person who sent it that the document has been taken not to have been lodged.
- (7) A document sent electronically need only comply with regulation 4(4) to the extent practicable.
- (8) If a document is lodged in accordance with subregulation (2), the Registrar must send an acknowledgment of the filing to the lodging party.
- (9) If a document that is lodged under subregulation (2) and accepted by the Registrar is a document that is required to be signed or stamped by the Registrar and returned to the lodging party the Registrar may return the document by sending it electronically to the email address of the lodging party.
- (9A) Any requirement in these regulations for 2 or more copies of a document to be filed or lodged in the office of the Registrar is taken to have been satisfied if the document is lodged electronically in accordance with these regulations.

[(10), (11) deleted]

*[Regulation 5 amended: Gazette 28 Apr 2006 p. 1651;
12 Oct 2010 p. 5153; 21 Aug 2015 p. 3337; 5 Mar 2019 p. 586;
SL 2022/75 r. 5.]*

6. Office of Registrar opening hours

- (1) Subject to subregulation (2), the office of the Registrar is to be open to the public for the transaction of business on the days and at the times determined by the Registrar, after consultation with the Chief Commissioner, except on public holidays and on any other days on which public offices are closed.

- (2) A commissioner or the Registrar may, in special circumstances, direct that the office of the Registrar be open at times outside those determined under subregulation (1).
- (3) Subject to subregulation (3A), a document is taken to have been received on a particular day in the office of the Registrar if it is lodged electronically at any time on that day up to and including midnight.
- (3A) If, in accordance with subregulation (3), a document lodged electronically would be received in the office of the Registrar on a Saturday, Sunday or public holiday, the document is taken to have been received in the office of the Registrar on the next day when the office of the Registrar opens to the public for the transaction of business.
- (4) Opening hours determined under subregulation (1) are to be published on the Commission's website at <http://www.wairc.wa.gov.au>.

*[Regulation 6 amended: Gazette 28 Apr 2006 p. 1651;
12 Oct 2010 p. 5154; 19 Dec 2018 p. 4838; 5 Mar 2019 p. 587.]*

7. Procedure by Registrar

- (1) The Registrar is to issue all processes out of the Commission and each document presented to the office of the Registrar for filing or issue under the Act or these regulations is to be stamped with the stamp of the Commission endorsed with the date and time of filing.
- (2) The Registrar is to mark each originating process with a distinguishing number and all documents filed and any award, order, declaration or direction made by the Commission in relation to the matter is to be distinguished by the same number.
- (3) The Registrar is to keep a register of all proceedings in and awards, orders and declarations made by the Commission and the entries in the records kept with regard to each matter are to be entered together and kept separate from the entries with respect to any other matter.

- (4) Every decision of the Commission deposited in the office of the Registrar is to have the date it is deposited stamped upon it.
- (5) If the decision of the Commission is deposited electronically the Registrar is to electronically embed in the decision the date it is deposited.
- (6) The register referred to in these regulations may be in the form of a record or information stored by electronic means.
- (7) Subject to the provisions of these regulations relating to documents being accepted for filing, and the provisions requiring the party lodging the documents to complete the copies as endorsed by the Registrar, the Registrar is to cause the copies to be stamped and returned to the party.

8. Duties of Registrar in respect of applications

- (1) The Registrar is to take such action in respect of applications to the Commission as the Chief Commissioner, either generally or in the particular case, may direct.
- (2) The Registrar is to keep a register in which the Registrar is to enter each filed application, the action taken by the Registrar in relation to it, and the date on which the action is taken.
- (3) Unless in any particular case the Chief Commissioner otherwise directs, the Registrar is to present each application to the Chief Commissioner for allocation when the Registrar is satisfied that the procedures necessary to enable the matter to be listed for hearing, including, when appropriate, the procedures referred to in sections 29A(2), (3) and (4) of the Act have been complied with.
- (4) Where the Chief Commissioner directs that the issues to be referred to the Commission for determination by arbitration are to be settled before the matter is allocated, those issues are to be settled before the Registrar unless the Chief Commissioner otherwise directs in that particular case.

[Regulation 8 amended: Gazette 19 Dec 2018 p. 4838.]

9. Direction to Registrar to investigate and report

A direction under section 93(8) of the Act may be given orally or in writing, but if given orally the direction is to be confirmed in writing.

10. Stamp of Commission

- (1) There is to be a stamp which is to —
 - (a) bear the words “The Stamp of the Western Australian Industrial Relations Commission”; and
 - (b) provide for a date and a facsimile of the signature of the Registrar.
- (2) The stamp is to be in the custody of the Registrar.
- (3) In addition to any other requirement of these regulations the stamp is to be affixed by the Registrar or at his or her direction to all documents issued in the Registrar’s name in relation to proceedings before the Commission.
- (4) An electronic document may be stamped by having a digital version of the stamp embedded within it.

11. Seal of Commission

- (1) The Seal of the Commission is to bear the Royal Coat of Arms and the words “The Seal of the Western Australian Industrial Relations Commission”.
- (2) The Seal is to be in the custody of the Registrar.
- (3) The Seal is to be affixed by the Registrar or at his or her direction to all awards and orders of the Commission and to such other documents as the Commission may direct.
- (4) An electronic document may have a digital version of the Seal embedded within it.

12. Publication of information and notices

- (1) The Registrar may only publish on a website maintained by the Commission such material as is authorised by the Act, these regulations or by a commissioner.
- (2) Where under this regulation the Registrar publishes on a website maintained by the Commission a notice or other material required by these regulations the Registrar is to ensure that the notice or material clearly states the authorisation and the day on which the notice or material is first published on the website.

[Regulation 12 amended: Gazette 19 Dec 2018 p. 4838.]

Part 3 — Conduct of proceedings

Division 1 — Notice of application, response and parties

[Heading amended: Gazette 5 Mar 2019 p. 619.]

13. Applications to Commission

- (1) Except as otherwise provided by the Act or by these regulations proceedings before the Commission however constituted may be commenced by notice of application in the approved form to which must be attached such statements, statutory or other declarations or other documents as are required by these regulations or as are directed by the Commission or by an officer authorised by the Commission, to be attached.
- [(2) deleted]*
- (3) A notice of application must —
 - (a) be signed by the applicant or the applicant's agent and, where necessary, be sealed by the applicant; and
 - (b) accurately describe all of the parties to the application, and their respective addresses for service; and
 - (c) have attached a written statement of claim that clearly and concisely specifies the particulars of the applicant's claim, the exact nature of the relief sought and the purpose of the application.
- (4) Subject to subregulation (5), on receiving an application the Registrar is to endorse on the notice of application whether a response under regulation 14 is required within the time required by subregulation (6).
- (5) The applicant may make an application to the Commission for a shortened time for responses in which case the copies of the application required to be lodged by these regulations are not to be returned to the applicant until the application for shortened time for responses has been determined by the Commission.

- (6) Subject to these regulations or the direction of the Commission otherwise, the time required for filing any response under regulation 14 is 21 days from the date of being served with the notice of application.
- (7) An application to shorten the time for filing a response need not be served on the respondent and is to be determined by the Commission after making such inquiries as it considers appropriate in the circumstances of the case.

[Regulation 13 amended: Gazette 28 Apr 2006 p. 1651; 5 Mar 2019 p. 619 and 622.]

14. Response

A response must be in the approved form and must specify with particularity the response and the basis on which it is given.

[Regulation 14 inserted: Gazette 4 Jul 2014 p. 2389; amended: Gazette 5 Mar 2019 p. 619-20 and 622.]

15. General form of objection

- (1) Except as otherwise provided in the Act or these regulations, a person who is entitled to be heard in objection to any application and who desires to be so heard must file a notice of objection in the approved form and serve it on the person to whom the objection is directed not less than 7 days before the hearing of the matter that is the subject of the objection.
- (2) The notice must state clearly the grounds of objection and must specify with particularity the manner in which the objector is or is likely to be affected by the application.
- (3) At the hearing of the application an objector is restricted to the grounds set out in the notice of objection unless leave is granted by the Commission.

[Regulation 15 amended: Gazette 5 Mar 2019 p. 622.]

16. Withdrawal or discontinuance of application

- (1) Subject to subregulation (4) an applicant may withdraw or wholly discontinue an application against any respondent or withdraw any part of the claim contained in the application at any time before it has been set down for hearing by filing a notice in the approved form in the office of the Registrar or by giving advice in writing to the Commission and to every respondent affected by it.
- (2) Subject to subregulation (4), the filing of a notice in accordance with subregulation (1) withdraws or discontinues the application or part of the claim, as the case may be, and the Registrar is to advise the parties accordingly after the notice has been filed.
- (3) After being filed, a copy of the notice must be served on every respondent directly affected by it.
- (4) Where a counter-proposal has been filed in response to an application the application may only be withdrawn under subregulation (1) with the consent of the respondent making the counter-proposal in the approved form.
- (5) Except as otherwise provided in this regulation it is not competent for an applicant to withdraw or discontinue the application without leave of the Commission but the Commission may before, at or after the hearing, order the application be discontinued or dismissed or any part of it be struck out.

*[Regulation 16 amended: Gazette 28 Apr 2006 p. 1651;
5 Mar 2019 p. 619 and 622.]*

17. Application to amend

- (1) A party to proceedings may apply to amend any document filed.
- (2) The application must be in writing to the Commission citing the distinguishing number of the proceedings to which it relates and must include —

- (a) a statement setting out the amendment sought to be made; and
 - (b) the grounds for seeking leave to amend; and
 - (c) where the time for filing the document in accordance with these regulations has expired, reasons why leave should be granted.
- (3) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the other parties to the application or such parties as directed by the Commission in a particular case.
- (4) It is not necessary for a party served with an application to file a response to the application.
- (5) Despite subregulations (1) to (4), the Commission may at any stage during the hearing of any matter before it permit an application to be made orally for the amendment of any document on such terms as the Commission thinks just.

[Regulation 17 amended: Gazette 5 Mar 2019 p. 587 and 621.]

18. Joinder of parties

- (1) An application to join any person as a party to proceedings before the Commission (the ***substantive proceedings***) must —
- (a) be made in the approved form; and
 - (b) name the person the applicant seeks to be joined as a party to the substantive proceedings (the ***person to be joined***); and
 - (c) have attached a written statement of the grounds on which the application is made and the facts to show that the applicant is entitled to make the application.
- (2) The Registrar is to give an application made under subregulation (1) the same distinguishing number as the substantive proceedings to which it relates.

- (3) The Registrar must serve a copy of the application and the attachments on —
 - (a) the person to be joined; and
 - (b) each other party to the substantive proceedings.
- (4) The application is not to be listed for hearing unless —
 - (a) a response has been received from the person to be joined; or
 - (b) the time for filing a response has expired; or
 - (c) the Commission otherwise directs.

*[Regulation 18 inserted: Gazette 9 Jan 2015 p. 211-12;
amended: Gazette 5 Mar 2019 p. 619, 621 and 622.]*

19. Intervention

- (1) Where under the Act a person intends to intervene or, as the case may be, intends to seek leave to intervene in any proceedings before the Commission, the person must give notice accordingly to the Commission and to the parties to those proceedings.
- (2) Where practicable, a notice under subregulation (1) —
 - (a) must be in writing; and
 - (b) must be given not less than 5 days (or as the Commission may otherwise direct in a particular case) before the day on which the intervener intends to appear in those proceedings; and
 - (c) must state the grounds on which intervention is made or intended.

[Regulation 19 amended: Gazette 5 Mar 2019 p. 587.]

Division 2 — Interlocutory proceedings

20. Discovery, production and inspection of documents

- (1) For the purposes of this regulation —

discovery means disclosure to the other party of the existence of all documents in the party's possession, custody or power that relate to a matter in question in the substantive application before the Commission;

document means any record of information in the possession, custody or power of the party in any way relating to the proceedings and includes —

- (a) any disc, tape, sound-track or other device in which sounds or other means of transmitting data (not being visual images); and
- (b) any film, negative, disc, tape, video or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other device, of being reproduced from it;

inspection, in relation to a document that is not in writing or otherwise capable of being inspected by visual means alone, includes the right to require the party making discovery to supply a copy of the document in a form in which it is in writing or otherwise capable of being inspected by visual means alone.

- (2) A party to any proceedings before the Commission may apply to the Commission in Chambers for an order under section 27(1)(o) of the Act to require a party to —
- (a) prepare a list of discoverable documents in an approved form; and
 - (b) file and serve the list of documents within the time specified by the order; and
 - (c) make the documents specified in the list available for inspection and copying.

- (3) The application must be in writing to the Commission citing the distinguishing number of the proceedings to which it relates.
- (4) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the respondent.
- (5) It is not necessary for the respondent to file a response to the application.
- (6) The Commission may limit oral arguments, conduct a hearing by telephone conference, or decline to take oral submissions when written submissions have been filed.
- (7) Where there has not been a conference of the parties held by the Commission, or the Registrar as the case may be, an order of the kind mentioned in subregulation (2) cannot be made unless the Commission decides that the circumstances of the proceedings make it fair and just to make the order.
- (8) Where the Commission makes an order for discovery under this regulation, the discovery is not required to be provided on oath unless the Commission specifically orders that it be so provided.
- (9) The Commission may order a party to pay the reasonable costs of supplying a copy of a document in a form in which it is capable of being inspected by visual means alone.
- (10) A document in the possession, custody or power of the party must not be used by the party as evidence in the hearing of the proceedings if it is not disclosed —
 - (a) in the list of documents; or
 - (b) otherwise before the hearing of the proceedings.
- (11) Despite subregulation (10), the Commission may, on an interlocutory application by the party or on an oral application by the party at the hearing, order that the document be used as evidence.
- (12) A party that has been ordered under this regulation to give discovery is, subject to any further order made, under a

continuing obligation until the conclusion of the hearing to give discovery of any document in any way relating to the proceedings and not already discovered by that party.

- (13) Any order that has been made under this regulation may be revoked or varied by a subsequent order of the Commission made before the hearing of the proceedings.
- (14) Despite the provisions of this regulation, the Commission may at any stage during the hearing of any matter before it permit an application to be instituted orally for the production of documents on such terms as the Commission thinks just.

[Regulation 20 amended: Gazette 5 Mar 2019 p. 588 and 621.]

21. Order for production to Commission

- (1) At any stage of the proceedings the Commission may order any party to produce to the Commission any document in the party's possession, custody or power, relating to any matter in question in the proceedings.
- (2) No order for production of any documents to the Commission can be made unless the Commission is of the opinion that the order is necessary either for disposing fairly of the matter or for saving costs.

22. Further particulars

- (1) A party to any matter before the Commission, or a person who has applied to become a party to the matter, may apply to the Commission in Chambers for an order that any other party to the matter furnish further and better particulars of any claim, response, counter-proposal or any other matter stated in or in relation to the matter.
- (2) The application must be in writing to the Commission citing the distinguishing number of the proceedings to which it relates.
- (3) The application must detail the nature of the particulars sought.

- (4) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the respondent.
- (5) It is not necessary to file a response to the application.
- (6) Despite the provisions of this regulation, the Commission may at any stage during the hearing of any proceedings before it, of its own motion or on an application by a party to the proceedings, direct further and better particulars of the kind referred to in subregulation (1) be furnished on such terms as the Commission thinks just.

[Regulation 22 amended: Gazette 5 Mar 2019 p. 588, 619 and 621.]

23. Notice to admit

- (1) In relation to any matter before the Commission any party to a matter before the Commission may, at least 10 days (or such other time as may be fixed by the Commission) before the date fixed for the hearing of the matter, file a notice in the approved form (a **notice to admit**) requiring any other party to admit any fact relative to the issue.
 - (1A) The Registrar must serve the notice to admit on the other party.
- (2) A party on whom a notice to admit has been served shall, within 7 days or such other time as the Commission, on the application of that party, may direct, file a reply in writing admitting or denying the fact with or without qualification, as the case may be.
- (3) The Registrar must serve the reply on the party who filed the notice to admit.
- (4) In the case of a failure to reply to a notice to admit within the time prescribed or directed the Commission may direct the party in default to pay the costs of establishing the fact referred to in the notice.

[Regulation 23 amended: Gazette 5 Mar 2019 p. 588-9.]

Division 3 — Service

24. Service

- (1) Except as otherwise provided in these regulations or as the Commission otherwise directs in a particular case, as soon as practicable after any notice or document is filed or issued in proceedings before the Commission, the Registrar must serve a copy of the notice or document on each party entitled to be served.
- (2) Where any notice or document is required to be served under the Act or these regulations such service may be effected —
 - (a) in the case of an organisation in the manner prescribed by section 60(3) of the Act; or
 - (b) in the case of a corporation (other than an organisation), by leaving it at, or sending it by pre-paid post to, its principal place of business or principal office in the State or the registered office of the corporation; or
 - (c) in the case of a partnership, firm or unincorporated company or body, by leaving it at, or sending it by pre-paid post to its principal place of business in Western Australia; or
 - (ca) in the case of a public sector body, as defined in the *Public Sector Management Act 1994* section 3(1) —
 - (i) by serving it in a manner described in paragraph (c) on the public sector body; or
 - (ii) by serving it in a manner described in paragraph (d) on an agent appointed by the public sector body under regulation 63;

or

 - (d) in the case of any other person —
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it for the person at his or her usual or last known place of abode, or if the person is a

principal of a business at his or her usual or last known place of business; or

- (iii) by sending it by pre-paid post to the person's usual or last known place of abode, or if the person is a principal of a business, to his or her usual or last known place of business.

- (3) Service of any notice or document by pre-paid post may not be effected by sending it to a post office box address.

- (4) Service of any document outside the State of Western Australia must be in accordance with the *Service and Execution of Process Act 1992* of the Commonwealth section 51.

[Regulation 24 amended: Gazette 5 Mar 2019 p. 589.]

25. Electronic address for service

[(1) deleted]

- (2) For the purposes of enabling the service by email of documents that these regulations require to be served a person may, in addition to providing an address for service, provide an email address operating at that address.
- (3) A person who provides an email address is to be taken to have consented to being served with documents as an attachment to an email sent to that email address.
- (4) If a party's email address provided under this regulation changes, the party must lodge and serve a notice of change of address as soon as practicable after the change occurs.

[Regulation 25 amended: Gazette 5 Mar 2019 p. 589-90.]

26. Service electronically

- (1) If —
- (a) these regulations require a document to be served; and

- (b) the party to be served has provided an email address under regulation 25(2),

then, unless the contrary intention appears, the document may be served as an attachment to an email sent to that address.

- (2) A document cannot be served by email under this regulation if it cannot be lodged electronically.

[(3) deleted]

- (4) A document that is served by email on a person is to be taken to have been served —

- (a) if the whole document is sent before 4.30 p.m. on a working day, on that day;
(b) otherwise, on the next working day.

- (5) This regulation does not prevent a person from consenting to being served in a manner other than in accordance with these regulations.

[Regulation 26 amended: Gazette 5 Mar 2019 p. 590.]

27. Substituted service

- (1) Where provision is made for personal or other service of any notice or document in or in relation to proceedings before the Commission, the Commission may subject to the Act, make such order for substituted or other service or for the substitution, for the service otherwise required, of notice by letter, public advertisement or otherwise, as it thinks just.
- (2) An application for substituted service may be dealt with ex parte in Chambers unless the Commission otherwise directs in a particular case.
- (3) Any application for substituted service must be in the form of a notice of application in the approved form and must have attached to it a statement that clearly and concisely sets out the grounds relied on in support of the application.

- (4) Where the Commission orders that notice by public advertisement be substituted for the service otherwise required, the notice must contain such particulars as the Commission directs in a particular case.

[Regulation 27 amended: Gazette 15 May 2015 p. 1722; 5 Mar 2019 p. 622.]

[28. Deleted: Gazette 5 Mar 2019 p. 590.]

Division 4 — Conferences

29. Orders under sections 32 and 44

- (1) If the Commission gives or makes a direction, order or declaration under section 32(8) or 44(6)(ba) or (bb) of the Act in writing or reduces it to writing (a *conciliation document*), the Commission may give a direction (a *service direction*) as to service of the conciliation document.
- (2) The conciliation document must be —
- (a) sealed; and
 - (b) served —
 - (i) if a service direction is made — in accordance with the service direction; or
 - (ii) otherwise — by the Registrar on the parties.

[Regulation 29 inserted: SL 2022/19 r. 4.]

30. Compulsory conference

- (1) An application for a conference under section 44 of the Act must be made in the approved form and must set out the reasons for which the conference is sought.
- (2) No response need be filed to an application for a conference under section 44 of the Act.

- (3) A summons to a conference under section 44 of the Act may be given by the Commission or by any officer of the Commission at the direction of the Commission, orally, in writing, by telephone or by email.

[Regulation 30 amended: Gazette 5 Mar 2019 p. 590-1 and 619.]

31. Memorandum following compulsory conference

Where at the conclusion of a conference under section 44 of the Act a matter is to be heard and determined by the Commission, the Commission is to draw up or cause to be drawn up and sign, a memorandum of the matter requiring hearing and determination and for that purpose may direct parties to file statements of claim, responses, counter-proposals and replies in such manner and within such time as the Commission sees fit.

[Regulation 31 amended: Gazette 5 Mar 2019 p. 619-20.]

Division 5 — Conduct of hearings

32. Application for and notice of hearing

- (1) Any party to an application may request the Registrar to fix a date and place for the hearing of the application.
- (2) Except where otherwise provided in the Act or in these regulations, each party to any proceedings is to be given at least 7 days' notice (or such shorter notice as the Commission may, in a particular case, direct) in the approved form of the time and place fixed for hearing.
- (3) A matter may be listed for hearing by the Commission without a request from any party where the Commission considers it appropriate in the circumstances of the case to do so.

[Regulation 32 amended: Gazette 5 Mar 2019 p. 591 and 622.]

32A. Proceedings may be determined on the papers

- (1) Subregulation (2) applies in relation to any proceedings before the Commission unless —
 - (a) the proceedings require oral evidence to be given; or
 - (b) a party to the proceedings has objected under subregulation (4)(b) to having the proceedings determined on the papers; or
 - (c) the Commission decides in a particular case that it is not appropriate for the proceedings to be determined on the papers.
- (2) The Commission may determine any proceedings by conducting a hearing on the papers.
- (3) At a hearing on the papers, the Commission may make a determination on the basis of the documents filed or lodged by the parties.
- (4) If the Commission proposes to determine any proceedings by conducting a hearing on the papers, each party must be given —
 - (a) notice of the proposal; and
 - (b) a reasonable opportunity to object to having the proceedings determined on the papers.

[Regulation 32A inserted: Gazette 5 Mar 2019 p. 591-2.]

33. Procedure before Commission

- (1A) Subject to regulation 32A and subregulation (2), subregulation (1) sets out the procedure before the Commission except —
 - (a) before the Chief Commissioner on an application under section 66 of the Act; or
 - (b) on an appeal to be heard by the Full Bench; or
 - (c) on a matter before the Commission in Court Session.

- (1) The procedure referred to in subregulation (1A) is as follows —
 - (a) the applicant may make a brief statement outlining the applicant's case and describing the evidence the applicant will bring;
 - (b) the applicant may then call the applicant's witnesses;
 - (c) unless the Commission otherwise permits, the examination in chief may be conducted by not more than one person on behalf of the applicant, and the cross-examination may be conducted by not more than one person on behalf of each respondent;
 - (d) the applicant will be allowed to re-examine but the re-examination must be confined to matters arising out of the cross-examination;
 - (e) the case for the applicant must then close;
 - (f) the respondent may then state the respondent's case and call the respondent's witnesses and paragraphs (c) and (d) apply with such modifications as are necessary;
 - (g) if the respondent has produced evidence in support of any counter-proposal the applicant may call witnesses in respect of the counter-proposal;
 - (h) the respondent may then make closing submissions as to the evidence and the law;
 - (i) the applicant may then make closing submissions as to the evidence and the law;
 - (j) the respondent then has a right of reply limited to any questions of law raised that could not reasonably have been anticipated.
- (2) The procedure in subregulation (1) may be modified or varied by the Commission where the Commission considers it just or expedient so to do.

- (3) The procedure to be followed with respect to any intervener is to be as directed by the Commission in a particular case.

*[Regulation 33 amended: Gazette 19 Dec 2018 p. 4839;
5 Mar 2019 p. 592.]*

Division 6 — General

34. Elimination of delays

- (1) Directions under this regulation are to be directed to providing a speedy and inexpensive determination of the proceedings and are to be consistent with these regulations.
- (2) The Commission may, of its own motion or on an application by a party to proceedings, deal with applications or hold conferences by way of a telephone or video conference link-up.
- (3) The Commission may on its own motion or on an application by a party to proceedings —
- (a) require the parties to file and exchange memoranda before the hearing of any interlocutory proceeding in order to clarify the matters in issue before the hearing;
 - (b) make use of video tapes, film projection, computers and other equipment as the Commission thinks just in the proceedings;
 - (c) make arrangements for the more speedy and effective recording of evidence;
 - (d) direct that a party serve on the other parties at such times as are directed, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
 - (e) direct that a signed written statement referred to in paragraph (d) or any part of it stand as the evidence in chief of the witness.
- (4) An application under subregulation (2) or (3) may be made orally or in writing.

- (5) The Commission may require the parties to file a written outline of submissions and may require submissions to be confined to that outline.

35. Electronic documents and communications

- (1) The Commission may, on its own motion or upon application, give directions to facilitate —
- (a) the preparation, filing, service and exchange of electronic documents relating to proceedings before the Commission; and
 - (b) the preparation and issue of electronic documents by the Commission; and
 - (c) the conduct of proceedings before the Commission by means of the email or other electronic communication of written information between the Commission and parties to the proceedings.
- (2) The directions may vary the operation of, or allow non-compliance with, these regulations in particular circumstances.

36. Extension or abridgment of time

- (1) A party to any matter before the Commission may apply to the Commission to extend or abridge the time prescribed for doing any act or thing.
- (2) Unless the Commission otherwise directs in a particular case, any application to extend or abridge the time for doing any act or thing must be made to the Commission in Chambers.
- (3) The applicant must attach to the application a written statement specifying the period of extension or abridgment as the case requires that is sought and the grounds on which the application is made.

- (4) It is not necessary to serve the application unless the Commission, after making such inquiries as the Commission considers appropriate, otherwise directs in a particular case.
- (5) Subregulation (3) does not apply if all of the persons concerned consent to the extension of time and endorse the application accordingly.

37. Waiver of procedural regulations

Nothing in these regulations prevents the Commission from exempting a person in a particular case, either absolutely or subject to conditions, from any procedural requirement of these regulations.

38. Non-compliance with regulations

Non-compliance with any of these regulations does not render void any proceedings before the Commission or the Registrar, but the proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and on such terms as the Commission or the Registrar, as the case may be, thinks fit to remedy any defect caused by the failure to comply.

39. Practice

- (1) Where in any particular case the provisions of the Act and these regulations do not make any or adequate provision for a procedure to be followed and there is no established practice or usage of the Commission or where a difficulty arises or doubt exists as to the procedure to be followed, the Commission may give such directions with respect to the procedure to be followed as it considers necessary.
- (2) Directions under this regulation are to be directed to providing a speedy and inexpensive determination of the proceedings and are to be consistent with these regulations.

Industrial Relations Commission Regulations 2005

Part 3 Conduct of proceedings

Division 6 General

r. 39

- (3) Practice notes in relation to any matter or class of matters that are prepared by the Commission and published in the required manner become effective 14 days after the date of publication.

Part 4 — Witnesses and evidence

40. Application for examination of witness

- (1) Any application for an order for the examination of any witness or person under section 33(1)(d) of the Act must be made to the Commission in Chambers.
- (2) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the respondent.
- (3) It is not necessary for the respondent to file a response to the application.
- (4) Any examination referred to in subregulation (1) is to take place in the presence of the parties or their representatives, or of such of them as appear, and the witness may be cross-examined and re-examined.
- (5) The deposition taken on any examination referred to in subregulation (1) must be taken down in writing by or in the presence of the examiner so as to represent as nearly as possible the statement of the witness, and when completed must be read over to the witness and signed by the witness in the presence of any party who attends.
- (6) If any person duly summoned to attend for examination refuses to attend, or if having attended refuses to be sworn or affirmed, or refuses to answer any lawful question, application may be made to the Commission in Chambers *ex parte*, or on notice, for an order directing the person to pay the costs occasioned by the refusal or objection.
- (7) The original depositions authenticated by the signature of the examiner are to be transmitted by the examiner to the office of the Registrar for filing.
- (8) Unless otherwise directed by the Commission, no deposition can 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.

- (9) A deposition that may be given in evidence under subregulation (8) and that is certified under the hand of the person taking the examination is admissible in evidence without proof of the signature to such certificate.

[Regulation 40 amended: Gazette 5 Mar 2019 p. 592 and 621.]

41. Summons to witness

- (1) A summons to a person —
- (a) to appear and give evidence before the Commission; or
 - (b) to appear and give evidence before the Commission and to produce before the Commission any books, papers, or other documents in the person's possession, or under the person's control, in any way relating to the proceedings,
- must be in the approved form.
- (2) A summons must clearly indicate whether or not the person summoned is also to produce before the Commission any books, papers or other documents in any way relating to the proceedings that are in the possession, or under the control of, the person.
- (3) A summons must be directed to one person only.
- (4) Each summons must be prepared in duplicate by the party requesting it and be filed in the office of the Registrar and the Registrar is to retain the original and sign and affix the stamp of the Commission to the duplicate and issue it to the party applying for the purpose of service.
- (5) The party requesting the summons —
- (a) must cause it to be served personally on the person named in the summons; and
 - (b) must cause a copy of it to be served on any other party to the proceedings; and

- (c) must ensure that proof of service under paragraph (a) is given in the approved form.
- (6) At the time of service, the person serving the summons must tender to the person named in the summons sufficient money to enable him or her to travel between his or her place of residence or employment (whichever is appropriate) and the place of hearing mentioned in the summons.
- (7) Where a person summoned to produce before the Commission any books, papers, or other documents delivers the documents to the Registrar prior to the time at which the person is to appear in the Commission, the party who applied for the summons may apply in writing to the Commission in Chambers for leave to be given to them to have access to the documents prior to the hearing.

[Regulation 41 amended: Gazette 5 Mar 2019 p. 592-3 and 622; SL 2022/75 r. 6.]

42. Application to set aside witness summons

- (1) Any application to the Commission under section 33(2) of the Act for cause to be shown why a person served with a summons to witness should appear and give evidence before the Commission must be made to the Commission in Chambers.
- (2) The application must be served on the party on whose application the summons is issued.
- (3) It is not necessary to file a response to the application.

[Regulation 42 amended: Gazette 5 Mar 2019 p. 593.]

43. Witness statements and outlines of evidence

- (1) In any proceedings, the Commission may of its own motion or on application by a party to the proceedings give directions to any party to serve on each other party in the proceedings —

- (a) a written statement of the oral evidence that the party intends to adduce in chief on any issues of fact to be decided at the hearing; or
 - (b) a written outline of that evidence.
- (2) An application may be made orally or in writing to the Commission citing the distinguishing number of the proceedings to which it relates.
- (3) If the application is made in writing, the Registrar must, as soon as practicable after the application is filed, serve a copy of the application on the respondent.
- (4) Where the Commission directs that each party serve a written statement of the oral evidence that the party intends to adduce in chief, the Commission may require the statements to be served simultaneously.
- (5) Where the party serving the statement calls the witness at the hearing —
 - (a) the party is not, except with the leave of the Commission, to adduce evidence from the witness, the substance of which is not included in the statement served, except in relation to matters contained in a written statement served by another party or in relation to new matters that have arisen in the course of the hearing; and
 - (b) the Commission may direct that the statement served, or part of it, is to stand as the evidence, or part of the evidence, in chief of the witness; and
 - (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of the witness.

[Regulation 43 amended: Gazette 5 Mar 2019 p. 593 and 621.]

44. Evidence or submissions by video-link or telephone

- (1) An application for evidence to be taken, or submissions to be made, by video-link or telephone may be made in writing to the Commission citing the distinguishing number of the proceedings to which it relates.
- (2) An application made during the course of proceedings may be made orally.
- (3) The application must include —
 - (a) the reasons why such a procedure is sought; and
 - (b) the nature of the evidence to be taken or submissions to be made; and
 - (c) the expected duration of the evidence or submissions; and
 - (d) in the case of an application to take evidence —
 - (i) the number of witnesses proposed to be examined by video-link or telephone; and
 - (ii) whether issues of credit are likely to be raised; and
 - (e) in the case of submissions, the expected duration of the submissions; and
 - (f) the facilities available for such a procedure or that can reasonably be made available; and
 - (g) an undertaking to meet the costs involved.
- (4) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the other party or parties.
- (5) In deciding whether to grant the application, the Commission may take account of the matters set out in the application in addition to any other matters considered to be material, including cost, convenience to witnesses and all parties and the

availability of the necessary facilities both within the Commission and at the remote location.

- (6) If the Commission determines that it is appropriate to hear evidence or receive submissions by video-link or telephone, the Registrar may be directed to arrange and coordinate the appropriate facilities.
- (7) Without limiting the generality of subregulation (6), the Commission may direct that the party making the application give the Registrar such written undertaking regarding payment of the costs as the Registrar requires.
- (8) The Commission may waive all or part of the costs involved in taking evidence by video-link or telephone.

[Regulation 44 amended: Gazette 5 Mar 2019 p. 621.]

45. Disclosure of expert's report

- (1) In this regulation —
expert's report means a statement by an expert in writing that sets out the expert's opinion and the facts on which the opinion is formed and that contains the substance of the expert's evidence that the party serving the statement intends to adduce in chief at the hearing.
- (2) Unless the Commission otherwise orders, each party in proceedings to which this regulation applies must, at least 21 days before the date set down for hearing, serve experts' reports on each other party who has an address for service in the proceedings.
- (3) An application to the Commission for an order under subregulation (2) may be made in writing to the Commission citing the distinguishing number of the proceedings to which it relates.
- (4) The application must detail the nature of the order sought.

- (5) As soon as practicable after the application is filed the Registrar must serve a copy of the application on the respondent.
- (6) Unless the Commission otherwise orders, a party who requires the attendance of the expert for cross-examination must advise the party serving the expert's report not later than 7 days before the date set down for hearing.
- (7) Where the party serving the statement calls the witness at the hearing —
- (a) the party may not, except with the leave of the Commission, adduce evidence from the witness, the substance of which is not included in the statement served, except in relation to matters contained in a written statement served by another party or in relation to new matters that have arisen in the course of the hearing; and
 - (b) the Commission may direct that the statement served, or part of it, is to stand as the evidence, or part of the evidence, in chief of the witness; and
 - (c) any party may put the statement or any part of it in cross-examination of the witness, whether or not the statement or any part of it is referred to during the evidence in chief of the witness.
- (8) Where more than one expert is to be called in the proceedings the Commission may —
- (a) require the experts to confer with one another in the absence of the parties and their representatives; and
 - (b) require the experts to prepare a joint statement of any matters on which they agree, any matters on which they disagree, and the reasons for any disagreement; and
 - (c) hear the evidence of the experts together.

*[Regulation 45 amended: Gazette 28 Apr 2006 p. 1652;
5 Mar 2019 p. 621.]*

46. Exhibits

- (1) A party to any proceeding before the Commission may not remove any exhibit put in during the proceedings without the leave of the Commission.
- (2) Where the matter before the Commission has been completed the Registrar, subject to any direction of the Commission, is to retain any exhibit at least until after the expiration of a period of 60 days from the date when an appeal may be instituted under the Act.
- (3) The Commission may in a particular case direct the Registrar to return an original exhibit within this time subject to a copy being made and put in its place.

47. Declarations and affidavits

- (1) Any statutory declaration or affidavit must be filed in the office of the Registrar before being used in any proceedings and, except where these regulations otherwise provide, must be served on each other party to the proceedings not less than 24 hours before the time fixed for the hearing.
- (2) Any statutory declaration required to be made under these regulations must be made before a person who is an authorised witness under the *Oaths, Affidavits and Statutory Declarations Act 2005* section 12(6).

[Regulation 47 amended: Gazette 22 Jan 2008 p. 192.]

Part 5 — Various applications under Act

[Heading inserted: SL 2022/75 r. 7.]

48. Application for award

- (1) In addition to any other requirement imposed by the Act or these regulations, an application for an award, a new award or an interim award must clearly and concisely indicate —
 - (a) the area of operation and the scope of the proposed award; and
 - (b) where relevant, the names of such number of employers as is reasonably representative of those who would by common rule be bound by the proposed award.
- (2) After the application is filed, the Registrar must seek directions from the Commission as to service of the application.
- (3) The Registrar must serve a copy of the application together with its attachments on those persons directed by the Commission to be served with the application.
- [(4) *deleted*]
- (5) A respondent who is served with an application for an award and who desires to contest the claim or any provision sought by the applicant must, within the time endorsed on the notice of application or within such additional time as may be allowed under these regulations, file a response in the approved form.
- (6) A response must specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (7) A response may contain a counter-proposal in which case the proposal must be set out in such detail as to clearly specify the nature of the relief proposed.
- (8) After a respondent files a response, the Registrar must serve a copy on the applicant.

[(9) deleted]

- (10) The provisions of this regulation with respect to the time within which responses must be filed apply, with such modifications as are necessary, with respect to replies to counter-proposals.
- (11) Subject to subregulation (10) the time to be endorsed on the notice is 14 days.
- (12) At any hearing by the Commission of an application for an award, a party who was served with a copy of the claims or a copy of any counter-proposals and who did not file a response or a reply to the counter-proposals, as the case may be, within the times respectively allowed under these regulations may be heard with respect to those claims or counter-proposals only by leave of the Commission and then only on such conditions as the Commission may impose.
- (13) The information to be published under section 29A(2) of the Act must be in an approved form.
- (14) The applicant in proceedings to which section 29A(2) of the Act applies must, if the Registrar so requests and in the time required by the Registrar, lodge in the office of the Registrar a draft for settlement of the notice to be published in the required manner containing the information required by the Act.
- (15) An application to which this regulation applies is not to be listed for hearing until after the expiration of 14 days from the date of publication unless the Commission otherwise directs in a particular case.

*[Regulation 48 amended: Gazette 4 Jul 2014 p. 2390;
5 Mar 2019 p. 593-5.]*

49. Application to vary area of operation of award

- (1) An application to vary the area of operation or the scope of an award must have attached to it a statement of —
 - (a) the persons whom the applicant seeks to affect by the proposed variation; and

(b) the grounds on which the application is made.

- (2) Subject to subregulation (1), regulation 48 applies with such modifications as may be necessary to an application to vary the area of operation or the scope of an award.

50. Application to vary award

- (1) An application to vary an award that does not involve variation of the area of operation or the scope of the award must have attached to it a statement of particulars of the amendment or variation sought and, when the application is made during the specified term of the award, a short description of the circumstances that have arisen to cause the application.
- (2) Where the application seeks to vary the award with respect to a specified party or specified parties only, the application must contain a statement to that effect.
- (3) Where the award applies to more than one industry and the applicant seeks to vary the award in respect of a specified industry or specified industries only, the application must contain a statement to that effect.
- (4) The Registrar must serve the application on all the named parties to the award unless the Registrar requests the Commission for directions as to service of the application.
- (5) If the Registrar requests the Commission for directions as to service, the Registrar must serve the application on the persons directed to be served.
- (6) A respondent who is served with an application to vary an award and who desires to contest the claim or any provision sought by the applicant must, within the time endorsed on the notice of application or within such additional time as may be allowed under these regulations, file a response in the approved form.

- (7) A response must specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (8) A response may contain a counter-proposal in which case the proposal must be set out in such detail as to clearly specify the nature of the relief proposed.
- (9) After a respondent files a response, the Registrar must serve a copy on the applicant.

[(10) deleted]

- (11) The provisions of this regulation with respect to the time within which responses must be filed apply, with such modifications as are necessary, with respect to replies to counter-proposals.
- (12) Subject to subregulation (11) the time to be endorsed on the notice is 14 days.
- (13) At any hearing by the Commission of an application for a variation of award, a party who was served with a copy of the claims or a copy of any counter-proposals and who did not file a response or a reply to the counter-proposals, as the case may be, within the time allowed under these regulations may be heard with respect to those claims or counter-proposals only by leave of the Commission and then only on such conditions as the Commission may impose.
- (14) The information to be published under section 29A(2) of the Act must be in an approved form.
- (15) The applicant to proceedings to which section 29A(2) of the Act applies must, if the Registrar so requests and in the time required by the Registrar, lodge in the office of the Registrar a draft for settlement of the notice to be published in the required manner containing the information required by the Act.

*[Regulation 50 amended: Gazette 4 Jul 2014 p. 2390;
5 Mar 2019 p. 595-6.]*

51. Application for joinder of party to award

- (1) An application to add any employer, organisation or association as a named party to an award must have attached to it a written statement of the grounds on which the application is made and facts to show that the applicant is entitled to make the application.
- (2) The statement must state whether or not the addition may have the effect of extending the award to employees to whom another award already extends.
- (3) After the application is filed, the Registrar must seek directions from the Commission as to service of the application.
- (4) Unless in any particular case the Chief Commissioner directs otherwise, the Registrar is to give notice of the application by publication in the required manner and such notice is to advise that the application may be inspected by any interested person without charge and that any such person may, by giving written notice of objection to the Commission and to the applicant within 28 days of publication of the notice, appear and be heard on the hearing of the application.

[Regulation 51 amended: Gazette 5 Mar 2019 p. 596.]

52. Application for interpretation of award or industrial agreement

- (1) An application for interpretation of an award or industrial agreement within the meaning of section 46(5) of the Act must have attached to it a statement of —
 - (a) the number and title of the award or industrial agreement and the number of the clause or clauses under which the question arises; and
 - (b) the facts giving rise to the application; and
 - (c) the question to which an answer is desired.
- (2) An application under subregulation (1) must be served on each named party to the award or industrial agreement unless the

Commission considers that in a particular case service on every party to the award or industrial agreement is not necessary and directs the applicant to give notice of the application in such terms as the Commission may direct.

- (3) It is not necessary to file a response to the application.

*[Regulation 52 amended: Gazette 28 Apr 2006 p. 1652;
5 Mar 2019 p. 596.]*

53. Bargaining for industrial agreement

- (1) An application under —

- (a) section 42(6) of the Act for a direction that a negotiating party may negotiate separately with the initiating party; or
- (b) section 42A(2) of the Act for an extension of the period within which a person to whom notice is given to respond; or
- (c) section 42E of the Act seeking the Commission's assistance in bargaining for an industrial agreement; or
- [(d) deleted]*
- (e) section 42H of the Act for a declaration that bargaining has ended between negotiating parties,

must have attached to it the grounds upon which the application is made.

- (2) The applicant must serve a copy of the application upon each other negotiating party.
- (3) No response need be filed to the application.
- (4) Where an application has already been made under this regulation in relation to a matter, any further application under this regulation in relation to the matter may be made in writing to the Commission citing the first application number.

*[Regulation 53 amended: Gazette 12 Oct 2010 p. 5154;
5 Mar 2019 p. 619-20.]*

54A. Orders as to specified matters on which agreement has not been reached

- (1) An application under section 42G(1)(c) of the Act for an order as to specified matters on which agreement has not been reached must —
 - (a) be signed by all of the negotiating parties or their agents and, where necessary, be sealed by them; and
 - (b) have attached a statement that —
 - (i) specifies the application mentioned in section 42G(1)(b) of the Act; and
 - (ii) specifies the matters on which agreement has not been reached; and
 - (iii) summarises the respective positions of the negotiating parties and the nature of the relief sought by each of them; and
 - (iv) provides any other information considered by the negotiating parties to be relevant to the application.
- (2) It is not necessary to serve the application or to file a response to the application.

[Regulation 54A inserted: Gazette 12 Oct 2010 p. 5154-5; amended: Gazette 5 Mar 2019 p. 619-20.]

54. Enterprise order

- (1) Any application for an enterprise order must, where applicable, cite the application number of any application made under regulation 53.
- (2) In all other respects the provisions of regulation 53 apply to an application under this regulation.

55. Application for industrial agreement

- (1) Any application for registration of an industrial agreement must be accompanied by —
 - (a) a copy of the agreement, as executed by all of the parties to that agreement; and
 - (b) a statement that summarises any changes that the agreement effects in the relevant rates of pay and conditions of employment of the employees to whom the agreement relates.
- (2A) An application by all of the parties to an agreement must be signed by each of them or their agents, and when necessary, sealed by them.
- (2B) It is not necessary to serve an application referred to in subregulation (2A) on the parties to the agreement or to file a response to the application.
- (2) An applicant to proceedings to which section 29A(2) of the Act applies must, if the Registrar so requests and in the time required by the Registrar, lodge in the office of the Registrar a draft for settlement of the notice to be published in the required manner containing the information required by the Act.
- (3) An application to which this regulation applies is not to be listed for hearing until after the expiration of 14 days from the date of publication unless the Commission otherwise directs in a particular case.
- (4) On the registration of an industrial agreement the Registrar is to enter the agreement in the Register of Industrial Agreements.
- (5) The Register referred to in subregulation (4) may be kept in the form of information stored on a computer.

*[Regulation 55 amended: Gazette 12 Oct 2010 p. 5155;
5 Mar 2019 p. 597 and 619-20.]*

56. Retirement from industrial agreement

As soon as practicable after a notice under section 41(7) of the Act signifying a party's intention to retire from an industrial agreement is filed, the Registrar must serve a copy of the notice on each other party to the agreement.

[Regulation 56 inserted: SL 2022/75 r. 8.]

57. Variation of industrial agreement by subsequent agreement

- (1) Subject to this regulation the provisions of regulation 55 with such modifications as may be necessary apply to any industrial agreement that varies, renews, or cancels another industrial agreement.
- (2) Where a party to the agreement that is being varied, renewed or cancelled is not a party to the amending agreement, that party must be named in a Schedule to the amending agreement.

58. Application to waive notice required for production of records

- (1) Any application under section 49I(7) of the Act by an authorised representative to waive the requirement to give an employer notice of an intended exercise of a power under section 49I(6) of the Act must be in the form of a notice of application in the approved form to which there must be attached a statutory declaration by the representative setting out the grounds on which the waiver is sought.
- (2) It is not necessary to serve the application and the application may be dealt with by the Commission ex parte in Chambers.

[Regulation 58 amended: Gazette 5 Mar 2019 p. 622.]

59. Section 66 applications and directions

- (1) Any application under section 66 of the Act must be in the form of a notice of application in the approved form.

- (2) A statement of particulars must be attached to each such application, including, but not restricted to —
 - (a) particulars of the standing of the applicant as prescribed by section 66(1) of the Act; and
 - (b) particulars of any alleged breach of a rule of any organisation or particulars of any rule of any organisation in relation to which a remedy is sought under section 66 of the Act; and
 - (c) the orders or directions sought.
- (3) The application, after it has been filed in the office of the Registrar, must be transmitted to the Chief Commissioner's Associate to be endorsed with directions given by the Chief Commissioner as to service, a date of hearing, or any directions hearing.
- (4) The matter is then to proceed in accordance with those directions.

[Regulation 59 amended: Gazette 19 Dec 2018 p. 4839; 5 Mar 2019 p. 622.]

60. Proceedings before Full Bench for enforcement of Act

- (1) An application for enforcement under section 84A of the Act must be in the form of a notice of application in the approved form.
- (2) Where the application is made by the Registrar to enforce a direction, order or declaration made under section 32 of the Act, or in respect of a contravention or failure to comply with section 44(3) of the Act, a copy of the direction given to the Registrar is to be attached to the summons.
- (3) A direction to the Registrar or deputy registrar referred to in sections 84A(1)(b) and 93(9) of the Act is to be given by the Commission in writing.
- (4) Where the application is made other than by the Registrar at the direction of the Commission the application is to have attached

to it a statement in summary form of the circumstances giving rise to the application.

- (5) The Registrar is to ascertain from the presiding commissioner a date to be specified in the summons endorsed on the notice of application and that date is not without good cause to be less than 14 days from the date on which the notice of application is filed in the office of the Registrar.
- (6) As soon as practicable after the application is filed the Registrar is to cause the notice of application to be served on the respondent and in any event not less than 7 days before the date set for hearing of the application.
- (7) The applicant must appear in person or be represented at the hearing of the application.

*[Regulation 60 amended: Gazette 19 Dec 2018 p. 4840;
5 Mar 2019 p. 622.]*

[Part 6 heading deleted: SL 2022/75 r. 9.]

[Division 1 heading deleted: SL 2022/75 r. 9.]

60A. Applications for equal remuneration orders

- (1) An application under section 29(1)(b) of the Act for an equal remuneration order must be in the approved form and have attached to it a statement that includes details of the following —
 - (a) the terms of the order sought;
 - (b) the employees to be covered by the order;
 - (c) any industrial instrument that applies to those employees;
 - (d) the nature of the work, skill and responsibility required of those employees;
 - (e) any applications for an alternative remedy that have been made in relation to those employees.

r. 60A

- (2) After an application is filed, the Registrar must seek directions from the Commission as to service of the application.
- (3) The Registrar must serve a copy of the application together with its attachments as directed by the Commission.
- (4) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 14 days after being served with the application.
- (5) A response —
 - (a) must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the application; and
 - (b) may contain a counter-proposal in which case the response must clearly specify in detail what is proposed.
- (6) As soon as practicable after a respondent files a response, the Registrar must serve a copy of the response on each other party.
- (7) If the applicant is served with a response and wants to reply to the response, the applicant must file a reply in writing within 14 days of being served with the response.
- (8) Subregulation (9) applies to a party to an application for an equal remuneration order if the party —
 - (a) was served with a copy of the application or a copy of a response containing a counter-proposal; and
 - (b) did not file a response or a reply, as the case may be, within the times respectively allowed under these regulations.
- (9) At a hearing of the application, the party may be heard with respect to the application or the counter-proposal —
 - (a) only by leave of the Commission; and

(b) on the conditions, if any, imposed by the Commission.

[Regulation 60A inserted: SL 2022/75 r. 10.]

61. Unfair dismissal and contractual benefit claims by employees

- (1) The following claims must be referred to the Commission by application in the approved form and have attached to the application the particulars approved by the Chief Commissioner from time to time —
 - (a) a claim by an employee, referred under section 29(1)(c) of the Act, that the employee has been harshly, oppressively or unfairly dismissed from employment;
 - (b) a claim by an employee, referred under section 29(1)(d) of the Act, that an employer has not allowed the employee a benefit, other than a benefit under an award or an order, to which the employee is entitled under the contract of employment.
- (2) If a claim is referred under section 29(1)(c) of the Act after the time prescribed in section 29(2) of the Act, the application must have attached to it a statement from the applicant setting out the facts on which the applicant relies to show why it would be unfair for the Commission not to accept the referral.
- (3) Unless the Commission otherwise directs, the Registrar must, as soon as practicable after an application is filed, serve a copy of the application on each respondent.
- (4) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 21 days after being served with the application.
- (5) A response must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.

- (6) Unless the Commission otherwise directs, the Registrar must, as soon as practicable after a response is filed, serve a copy of the response on the applicant.
- (7) At a hearing by the Commission of an application, a party who was served with a copy of the application and who did not file a response within the time allowed under these regulations may only be heard on the matters raised in the application and not on any other matter.

[Regulation 61 inserted: SL 2022/75 r. 10.]

62. Stop bullying or sexual harassment applications by workers

- (1) A stop bullying or sexual harassment application referred to the Commission by a worker under section 29(1)(e) of the Act must —
 - (a) provide details of the following respondents to the application —
 - (i) the person conducting a business or undertaking for whom the worker carries out work;
 - (ii) each individual alleged to be bullying or sexually harassing the worker at work;
 - (iii) if the behaviour of an individual referred to in subparagraph (ii) occurs in relation to that individual's work — the person conducting a business or undertaking for whom the individual carries out work;
 - and
 - (b) otherwise be in the approved form; and
 - (c) have attached to the application the particulars approved by the Chief Commissioner from time to time.
- (2) Unless the Commission otherwise directs, the Registrar must serve a copy of an application that is filed on —
 - (a) the respondent referred to in subregulation (1)(a)(i) as soon as practicable after the application is filed; and

- (b) each respondent referred to in subregulation (1)(a)(ii) and (iii) within 1 day after the application is served under paragraph (a).
- (3) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 7 days after being served with the application.
- (4) A response must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the application.
- (5) Unless the Commission otherwise directs, the Registrar must, within 7 days after a respondent files a response, serve a copy of the response on each other party.
- (6) At a hearing by the Commission of a stop bullying or sexual harassment application, a party who was served with a copy of the application and who did not file a response within the time allowed under these regulations may only be heard on the matters raised in the application and not on any other matter.

[Regulation 62 inserted: SL 2022/75 r. 10.]

63A. Application by employee or former employee under *Public Sector Management Act 1994*

- (1) In this regulation —
employing authority has the meaning given in the *Public Sector Management Act 1994* section 3(1).
- (2) The following applications to the Commission must be made in a notice of referral in the approved form —
 - (a) a referral by an employee or former employee under the *Public Sector Management Act 1994* section 78(2) or (3);
 - (b) a referral by an employee under the *Public Sector Management Act 1994* section 95(2) or 96A(2);

r. 63A

- (c) a referral by a former employee under the *Public Sector Management Act 1994* section 96A(2).
- (3) Unless the Commission otherwise directs, after the application is filed the Registrar must serve a copy of the application together with its attachments on the applicant's employing authority or former employing authority as soon as reasonably practicable.
- (4) An employing authority that is served with the application and that wants to respond to it may file a response in the approved form within 21 days of being served with the application.
- (5) A response must, in summary form —
 - (a) specify the facts on which the employing authority relies; and
 - (b) admit or dispute, either with or without qualification, each part of the application made by the applicant.
- (6) Unless the Commission otherwise directs, the Registrar must serve a copy of the response on the applicant as soon as reasonably practicable.

[Regulation 63A inserted: Gazette 15 May 2015 p. 1722-3; amended: Gazette 5 Mar 2019 p. 598-9 and 622-3.]

[Division 2 heading deleted: SL 2022/75 r. 11.]

Part 6 — Agents

[Heading inserted: SL 2022/75 r. 12.]

63. Appointment of agent

- (1) Subject to this regulation a person cannot be recognised as agent for a party to any proceedings in the Commission unless the person is appointed in writing in the approved form (the *warrant*) and that form is filed.
- (2) An applicant who refers a matter to the Commission under section 29(1)(b), (c), (d) or (e) of the Act may appoint a person as agent by completing the relevant part of the approved form referring the matter to the Commission.
- (3) A copy of the appointment in the approved form must be served on the other parties to the proceedings.
- (3A) The warrant may appoint as agent —
 - (a) a person specified in the warrant; or
 - (b) a member of a class of persons specified in the warrant.
- (3B) The warrant may be expressed to apply in relation to —
 - (a) proceedings specified in the warrant; or
 - (b) all proceedings before the Commission.
- (4) An appointment of an agent under this regulation may be for a specified period of time or indefinitely and may be withdrawn by writing filed at any time, but remains in force unless and until it is so withdrawn.
- (5) Where a person appoints another person as his or her agent in respect of any matter in the Commission, and in the appointment expressly validates any action taken in respect of that matter before the appointment, any such action is to be regarded as having been taken by the principal.
- (6) A document instituting proceedings or any subsequent document to be filed in the proceedings may be signed and

lodged for filing as necessary by the duly appointed agent of a party on whose behalf it is filed.

- (7) Any document lodged for filing by an agent of a party must be lodged and filed in the name of the party and bear on it endorsement of the name of the agent and the fact that the agent is acting as the agent of the principal.

*[Regulation 63 amended: Gazette 12 Jan 2018 p. 116;
5 Mar 2019 p. 622-3; SL 2022/75 r. 13.]*

[Division 3 heading deleted: SL 2022/75 r. 14.]

Part 6A — Delegation to Registrars

[Heading inserted: SL 2022/75 r. 15.]

64. Delegation to Registrars

- (1) A claim under section 29(1)(c) or (d) of the Act may be referred by the Chief Commissioner or the Commission to the Registrar for resolution by conciliation under section 32 of the Act by the Registrar.
- (2) A review of an award for the purposes of section 40B of the Act may be referred by the Commission to the Registrar —
 - (a) for investigation and report to the Commission by the Registrar; and
 - (b) for the Registrar to assist the parties to the award, by way of facilitation, conciliation or both, to reach an agreement on any proposed variations to the award.

[Regulation 64 amended: SL 2022/75 r. 16]

65. Time limits for review of decisions of Registrars

- (1) For the purposes of section 96(9) of the Act, a party to proceedings in which a Registrar has performed a function delegated under regulation 64 may apply to the Commission to review a decision made by the Registrar within 7 days of the making of the decision, or such further time as is allowed by the Chief Commissioner.
- (2) For the purposes of section 96(12) of the Act, a review referred to in section 96(11) of the Act in respect of a function delegated under regulation 64 is to be carried out within 14 days of the Chief Commissioner assigning a Commissioner to undertake the review or deciding to undertake the review himself or herself, or such further time as is allowed by the Chief Commissioner.

- (3) In this regulation —
decision, made by a Registrar, means a direction, determination or order made by the Registrar in the performance of the delegated function.

Part 7 — Organisations and industrial associations

66. Registration of organisation

[(1) deleted]

- (2) An application under section 55 of the Act to the Commission in Court Session for registration of an organisation must be lodged in the office of the Registrar with the following attachments —
- (a) a statement as to —
 - (i) the steps taken by the organisation to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act;
 - (b) a copy of the resolution of the organisation authorising the application.
- (3) A person who objects to the registration of the organisation must lodge an objection in the approved form within 21 days of the publication in the required manner and otherwise the provisions of regulation 15 apply with respect to any objection to the registration.

[Regulation 66 amended: Gazette 5 Mar 2019 p. 622-3; SL 2022/75 r. 17.]

67. Registration of industrial association

- (1) An application to register a council or other body as an association under section 67 of the Act must be made to the Commission in Court Session in the approved form.
- (2) The application must be lodged in the office of the Registrar with the following attachments —
- (a) a list containing the full names of the organisations that are represented on the council or other body;

- (b) a list containing the full name and address of each person representing those organisations on the council or other body;
 - (c) a list containing the full names and addresses of the officers of the council or other body;
 - (d) a copy of the rules of the council or other body, certified as being correct by the principal executive officer or secretary of the council or other body;
 - (e) a statement as to —
 - (i) the steps taken by the council or other body to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section, as applied by section 67(3) of the Act; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act as applied by section 67(3) of the Act;
 - (f) a copy of the resolution authorising the application.
- (3) A person who objects to the registration of the council or other body as an association must lodge an objection in the approved form within 21 days of the publication in the required manner and otherwise the provisions of regulation 15 apply with respect to any objection to the registration.

*[Regulation 67 amended: Gazette 5 Mar 2019 p. 622-3;
SL 2022/75 r. 18.]*

68. Amalgamation of organisations

- (1) An application under section 72(1) of the Act to register a new organisation formed by amalgamating 2 or more organisations must be made to the Commission in Court Session in the approved form.

[(2) deleted]

- (3) The application must be lodged in the office of the Registrar with the following attachments —
- (a) a list containing the full names and addresses of the officers of the proposed new organisation;
 - (b) a copy of the rules of the proposed new organisation certified as being correct by the principal executive officer or secretary of the new organisation;
 - (c) a statement as to —
 - (i) the steps taken by the amalgamating organisations to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section, as applied by section 72(3) of the Act; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act as applied by section 72(3) of the Act;
 - (d) a copy of the resolution of each amalgamating organisation authorising the application.
- (4) A person who objects to the registration of the organisation must lodge an objection in the approved form within 21 days of the publication in the required manner and otherwise the provisions of regulation 15 apply with respect to any objection to the registration.

[Regulation 68 amended: Gazette 5 Mar 2019 p. 622-3; SL 2022/75 r. 19.]

69. Alteration of rules

- (1) An application to alter the rules of an organisation or association with respect to its name or to the qualification of persons for membership or the area of the State within which the organisation or association operates or intends to operate must be made to the Commission in Court Session in the approved form.

- (2) An application to alter the rules of an organisation or association that does not relate to its name and where the alteration would not have the effect of altering the qualification of persons for membership or the area of the State within which the organisation or association operates, or intends to operate, must be made to the Registrar in the approved form.
- (3) The application must be lodged in the office of the Registrar with the following attachments —
- (a) a copy of the registered rules of the organisation or association incorporating and showing in distinctive characters, each alteration of the rules of which registration is sought;
 - (b) a copy of each alteration;
 - (c) a statement as to —
 - (i) the steps taken by the organisation or association to inform members of the matters set out in section 62(3)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section; and
 - (ii) the opportunity afforded to members to make an objection under section 62(3)(b) of the Act;
 - (d) a copy of the resolution authorising the application.
- [(4) *deleted*]
- (5) A person who objects to the alteration of a rule referred to in subregulation (1) must lodge an objection in the approved form within 21 days of the publication in the required manner and otherwise the provisions of regulation 15 apply with respect to any objection to the alteration.

*[Regulation 69 amended: Gazette 5 Mar 2019 p. 622-3;
SL 2022/75 r. 20.]*

70. Substitution of new set of rules

- (1) An application for the substitution of a new set of rules for the registered rules of an organisation or association, where the substitution alters the name of the organisation or association, the rules of the organisation or association with respect to the qualification of persons for membership or the area of the State within which the organisation or association operates or intends to operate must be made to the Commission in Court Session in the approved form.
- (2) An application for the substitution of a new set of rules for the registered rules of an organisation or association, where the substitution does not alter the name of the organisation or association, the rules of the organisation or association with respect to the qualification of persons for membership or to the area of the State within which the organisation or association operates or intends to operate must be made to the Registrar in the approved form.
- (3) The provisions of regulation 69 apply, with such modifications as are necessary, to and in relation to an application for the substitution of a new set of rules, but in addition the application must have attached to it a copy of the new rules certified as being correct by the principal executive officer or secretary of the organisation or association.

*[Regulation 70 amended: Gazette 5 Mar 2019 p. 622-3;
SL 2022/75 r. 21.]*

71. Change of name

- (1) An application to change the name of an organisation or association must be made to the Commission in Court Session in the approved form.
- (2) The application must be lodged in the office of the Registrar with the following attachments —

- (a) a statement as to the steps taken by the organisation or association, and a copy of any notice or other document given to members, to inform them —
 - (i) about the proposal for the change of name and the reasons for the change of name; and
 - (ii) about the proposed new name; and
 - (iii) that the members or any of them may object to the making of the application by forwarding a written objection to the Registrar;
 - (aa) a statement as to the opportunity afforded to members to object to the making of the application;
 - (b) a copy of the proposed new name;
 - (c) a copy of the resolution authorising the application.
- (3) A person who objects to the change of name of the organisation or association must lodge an objection in the approved form within 21 days of the publication in the required manner and otherwise the provisions of regulation 15 apply with respect to any objection to the change of name.
- (4) A copy of the application must be served on the other parties to the proceedings.

*[Regulation 71 amended: Gazette 5 Mar 2019 p. 622-3;
SL 2022/75 r. 22.]*

72. Counterpart certificates

- (1) An application to the Commission in Court Session for a declaration under section 52A(7) of the Act must be made in the approved form.
- (2) If the application is for a declaration that, for the purposes of section 52A(2) of the Act, a Western Australian branch of a federal organisation is a counterpart federal body in relation to a State organisation, the application must be lodged in the office of the Registrar with the following attachments —

- (a) a copy of the rules of the State organisation and the rules of the branch;
 - (b) a statement comparing the rules relating to the qualifications of persons for membership of the State organisation and for membership of the branch;
 - (c) a statement comparing the offices that exist within the State organisation and the offices that exist within the branch;
 - (d) a statement indicating the number of persons currently members of the State organisation and the number of persons currently members of the branch;
 - (e) a statement indicating the number and classes of persons affected by section 71(3)(a) and (b) of the Act.
- (3) If the application is for a declaration that, for the purposes of section 52A(3) of the Act, a federal organisation is a counterpart federal body in relation to a State organisation, the application must be lodged in the office of the Registrar with the following attachments —
- (a) a copy of the rules of the State organisation and the rules of the federal organisation;
 - (b) either —
 - (i) if there is an agreement referred to in section 52A(4)(b) of the Act between the State organisation and the federal organisation — a copy of the agreement; or
 - (ii) otherwise — a statement comparing the State organisation and the federal organisation by reference to a matter referred to in section 52A(4)(a)(i) to (iv) of the Act;
 - (c) a statement indicating the number of persons currently members of the State organisation and the number of persons currently members of the federal organisation;

- (d) a statement indicating the number and classes of persons affected by section 52A(5) and (6) of the Act.

[Regulation 72 inserted: SL 2022/75 r. 23.]

73. Order as to whom employee organisation represents

- (1) An application (a **section 72A application**) to the Commission in Court Session for an order under section 72A(2) of the Act must —
 - (a) be made in the approved form; and
 - (b) set out in detail the grounds of the application.
- (2) A person who wants to be heard in relation to a section 72A application must —
 - (a) lodge an application in the approved form at least 10 days before the hearing of the section 72A application; and
 - (b) set out in detail in the application the grounds on which the person claims sufficient interest to be heard in relation to the section 72A application.
- (3) After an application under subregulation (2) is lodged, the Registrar must, at least 7 days before the hearing of the section 72A application, serve a copy of the application on each party to the section 72A application.

[Regulation 73 inserted: SL 2022/75 r. 23.]

74. Summons for cancellation or suspension of registration of organisation or association

- (1) A request for the Commission to direct the Registrar to issue a summons under section 73(1) of the Act must be in writing and must set out in detail the circumstances giving rise to the request.
- (2) A summons under section 73(1) of the Act must be in the approved form.

- (3) A copy of the direction to the Registrar to issue the summons must be attached to the summons and served with the summons.
- (4) On ascertaining the return date to be included in the summons the Registrar must cause the summons to be served on the organisation or association the registration of which is sought to be cancelled or suspended not less than 14 days before the return date.
- (5) Unless the Commission in Court Session otherwise directs in a particular case the Registrar must appear personally or be represented before the Commission in Court Session on the return of the summons.

[(6) *deleted*]

*[Regulation 74 amended: Gazette 5 Mar 2019 p. 622-3;
SL 2022/75 r. 24.]*

75. Request by organisation or association for cancellation of registration

- (1) Any request by an organisation or association to cancel its registration must be made to the Registrar in the approved form.
- (2) The request must state clearly the grounds on which the request is made and contain sufficient evidence to satisfy the Registrar that the cancellation has the consent of a majority of the total number of members of the organisation or association.

[Regulation 75 amended: Gazette 5 Mar 2019 p. 622-3.]

76. Application by Registrar for cancellation of registration

- (1) An application by the Registrar under section 73(12) of the Act to the Commission in Court Session to cancel the registration of an organisation or association must be in the approved form.
- (2) The application must —
 - (a) state clearly the grounds on which it is made; and

- (b) have attached to it a statutory declaration setting out the facts on which the Registrar relies.
- (3) The application must be served on the organisation or association the registration of which is sought to be cancelled.
- (4) If the respondent organisation or association intends to oppose the application, it must lodge an objection in the approved form within 14 days of being served with the application, and otherwise the provisions of regulation 15 apply with respect to any such objection.
- (5) If the respondent organisation or association intends to admit the facts (or any of them) on which the Registrar relies, it must, within 14 days of being served with the application, advise the Registrar in writing accordingly.
- (6) After the expiration of the time prescribed in subregulations (4) and (5) the Registrar must ascertain from the presiding commissioner a date for hearing the application and, as soon as practicable after setting a hearing date, must notify the organisation or association of the hearing.

[Regulation 76 amended: Gazette 19 Dec 2018 p. 4840; 5 Mar 2019 p. 622-4; SL 2022/75 r. 25.]

77. Certificates of registration

- (1) If the Registrar is authorised by the Commission in Court Session to register an organisation the Registrar must give to the organisation a certificate in the approved form.
- (2) If the Registrar is authorised by the Commission in Court Session to register a council or other body as an association the Registrar must give to the association a certificate in the approved form.
- (3) If the Registrar is authorised by the Commission in Court Session to register an organisation formed by the amalgamation of 2 or more organisations the Registrar must give to the organisation a certificate in the approved form.

- (4) If the Registrar registers an alteration of the rules of an organisation or association the Registrar must give to the organisation or association a certificate in the approved form.
- (5) If the Registrar registers a change of name of an organisation or association the Registrar must give to the organisation or association a certificate in the approved form.

*[Regulation 77 amended: Gazette 5 Mar 2019 p. 622-4;
SL 2022/75 r. 26.]*

78. Filing of records of organisation or industrial association

- (1) The list of names, residential addresses and occupations of persons holding office and a record of the number of members in an organisation or association required to be filed with the Registrar under sections 63(2) and 72B(6) of the Act must be so filed during the month of January in each year and be current as at the first day of that month.
- (2) The statutory declaration required by sections 63(2) and 72B(6) of the Act may be made by the President or Secretary of the organisation or association.
- (3) Notification of any change in the holding of office in an organisation or association under sections 63(3) and 72B(6) of the Act must be filed with the Registrar in writing within 14 days of the date of the change.

79. Balance sheet etc. of organisation

- (1) The balance sheet and statement of receipts and expenditure of an organisation or association required to be delivered to the Registrar under section 65 of the Act, must be itemised with sufficient particularity to show that the financial affairs of the organisation or association have been conducted in accordance with the rules of the organisation or association.
- (2) The balance sheet and statement of receipts and expenditure must, when delivered to the Registrar, be accompanied by a statutory declaration made by the secretary of the organisation

or association to the effect that the secretary placed at the disposal of the auditor all relevant books and documents in relation to the financial affairs of the organisation or association.

Penalty: a fine of \$40.00.

80. Inspection of documents

All documents filed with the Registrar under sections 63 and 65 of the Act may be inspected at the office of the Registrar during office hours on payment of the prescribed fee.

81. Notification of change of address

Notification of every change of address of the registered office of an organisation or association must be given to the Registrar by the secretary of the organisation or association, in writing, within 14 days of the date of change.

Penalty: a fine of \$40.00.

82. Right of entry — authority for representatives

- (1) Any application by a secretary of a registered organisation of employees for the Registrar to issue an authority under section 49J of the Act must be made in the approved form.
- (2) An application by a secretary of a registered organisation of employees for the Registrar to revoke an authority under section 49J(6) must be made in the approved form.
- (3) The secretary of a registered organisation must advise the address of the person to whom an authority is to be issued.
- (4) The application must be accompanied by a current passport size and style photograph of the person to be authorised.
- (5) The secretary of the registered organisation of employees filing the application must certify on the back of the photograph that the person on the photograph is the person nominated in the application.

- (6) The Registrar is to issue an authority unless the Registrar is satisfied that the person to be authorised is not a person who previously held an authority that had been revoked under section 49J(5) of the Act but had not been reissued by order of the Commission in Court Session under section 49J(2) of the Act.
- (7) The authority that the Registrar issues is to be in the form of a laminated card and is to include —
- (a) the words, as a heading, “Authorised Representative, Right of Entry and Inspection, *Industrial Relations Act 1979* section 49J”; and
 - (b) the name of the person nominated; and
 - (c) the words, appropriately completed, “(full name of person to whom the authority is issued) whose photograph and signature appear below, is appointed as an Authorised Representative of (name of registered organisation) for the purposes of Right of Entry and Inspection of any premises during working hours where relevant employees work. This Authority must be executed in accordance with the powers and limitations under the *Industrial Relations Act 1979* sections 49H and 49I.”; and
 - (d) a photograph of the person to whom the authority is issued; and
 - (e) the signature of, and date of issue by, the Registrar; and
 - (f) the signature of the authorised representative; and
 - (g) the Commission’s website address.
- (8) Any application to the Commission under section 49J(5) of the Act for the Commission to revoke or suspend an authority must be in the form of a notice of application in the approved form and must set out the grounds of the application.
- (9) Any application to the Commission under section 49J(5) of the Act must be served on the organisation on whose behalf the

authority was issued and such service is taken to be service on the authorised representative whose authority is sought to be revoked.

[(10) deleted]

- (11) Any application to the Commission in Court Session to issue an authority revoked under section 49J(5) of the Act must be in the form of a notice of application in the approved form.
- (12) A person to whom an authority has been issued under section 49J of the Act must return the authority to the Registrar within 14 days after revocation of the authority.
- (13) The secretary of the employee organisation on whose behalf the nominated person was issued with an authority to represent that organisation, must remit to the Registrar a return every 6 months confirming the name of the person(s) who currently hold(s) authorisation to represent the organisation under section 49J of the Act.
- (14) The Registrar is to keep a register of authorities issued under this regulation and that register is to be a public register and made available via the Commission's website.

[Regulation 82 amended: Gazette 5 Mar 2019 p. 600 and 622-4.]

Part 8 — Applications and appeals under Part VID Division 9 of the Act

Division 1 — Applications

83. Establishing that proposed representative is qualified and consents to 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 or herself that the person —
 - (a) fulfils the requirements of section 97WY of the Act; and
 - (b) consents to the application being made.
- (2) The consent of the person that forms part of the application must be signed by the person 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 is also to supply such information and evidence for the purposes of subregulation (1)(a) as the Registrar may request.

84. 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 is to 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 is to 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.

Division 2 — Appeals under section 97XB or 97XQ of the Act

85. Appeal against refusal to give approval

An appeal to the Commission under section 97XB or 97XQ of the Act may be commenced by the filing in the office of the Registrar of an appeal notice in the approved form.

[Regulation 85 amended: Gazette 5 Mar 2019 p. 622-4.]

86. Service of appeal notice

- (1) If an appeal notice is filed in relation to a matter referred to in regulation 85, the Registrar is to serve a copy of the notice on each of the following persons (called an *interested person* in this Division) —
 - (a) any party, other than the appellant, who has an intellectual disability;
 - (b) the applicant in the application to which the appeal relates if he or she is not the appellant;
 - (c) the proposed representative;
 - (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.

87. 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 is not required to appear or be heard at the hearing.

- (2) If an interested person wishes to be heard at the hearing of the appeal the person 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 the person 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.

88. 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.

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

[Heading inserted: Gazette 21 Aug 2015 p. 3337.]

89A. Terms used

In this Part —

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).

[Regulation 89A inserted: Gazette 21 Aug 2015 p. 3337; amended: Gazette 5 Mar 2019 p. 600.]

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 approved form.

[Regulation 89B inserted: Gazette 21 Aug 2015 p. 3337; amended: Gazette 5 Mar 2019 p. 622-4.]

89C. Service of notice of appeal against removal action

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

[Regulation 89C inserted: Gazette 21 Aug 2015 p. 3338; amended: Gazette 5 Mar 2019 p. 621.]

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 after the service of the notice of appeal by completing and filing in the office of the Registrar 3 copies of —
 - (a) a response stating the chief executive officer's reasons for deciding to take removal action; and
 - (b) a list of all documents, as defined in regulation 20(1), that the chief executive officer considered before making the decision; and
 - (c) 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
 - (d) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case.
- (2) The response must be in the approved form and have attached to it the list of documents, the summary and the reply.
- (3) The Registrar must serve a copy of the response and its attachments on the appellant.

*[Regulation 89D inserted: Gazette 21 Aug 2015 p. 3338;
amended: Gazette 5 Mar 2019 p. 600-1, 619-20 and 622-4.]*

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 —
 - (a) the chief executive officer must 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) the Registrar must serve a copy of those documents on the appellant.

r. 89F

- (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) —
 - (a) the appellant must file in the office of the Registrar 3 copies of every document relied upon by the appellant in the appellant's case; and
 - (b) the Registrar must serve a 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, the requirements under this regulation in relation to that document are taken to have been satisfied.

[Regulation 89E inserted: Gazette 21 Aug 2015 p. 3338-9; amended: Gazette 5 Mar 2019 p. 601-2.]

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 by completing and filing in the office of the Registrar 3 copies of —
 - (a) a statement of the chief executive officer's reformulated reasons; and
 - (b) 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
 - (c) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case.
- (2) The statement, the summary and the reply must be in a form approved by the Chief Commissioner.

- (2A) The Registrar must serve a copy of the statement, the summary and the reply on the appellant.
- (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.

*[Regulation 89F inserted: Gazette 21 Aug 2015 p. 3339;
amended: Gazette 5 Mar 2019 p. 602-3.]*

89G. Withdrawal or discontinuance of appeal against removal

- (1) An appellant may withdraw or wholly discontinue an appeal against removal action, or withdraw any part of the appeal, by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the approved form.
- (2) The Registrar must serve a copy of the notice on the chief executive officer.

[Regulation 89G inserted: Gazette 5 Mar 2019 p. 603.]

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

[Heading inserted: Gazette 21 Aug 2015 p. 3340.]

89H. Terms used

In this Part —

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.

*[Regulation 89H inserted: Gazette 21 Aug 2015 p. 3340;
amended: Gazette 5 Mar 2019 p. 603.]*

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 approved form.

*[Regulation 89I inserted: Gazette 21 Aug 2015 p. 3340;
amended: Gazette 5 Mar 2019 p. 622-4.]*

89J. Service of notice of appeal against removal action

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

[Regulation 89J inserted: Gazette 21 Aug 2015 p. 3340; amended: Gazette 5 Mar 2019 p. 621.]

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 after the service of the notice of appeal by completing and filing in the office of the Registrar 3 copies of —
 - (a) a response stating the chief executive officer's reasons for deciding to take removal action; and
 - (b) a list of all documents, as defined in regulation 20(1), that the chief executive officer considered before making the decision; and
 - (c) 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
 - (d) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case.
- (2) The response must be in the approved form and have attached to it the list of documents, the summary and the reply.
- (3) The Registrar must serve a copy of the response and its attachments on the appellant.

[Regulation 89K inserted: Gazette 21 Aug 2015 p. 3341; amended: Gazette 5 Mar 2019 p. 603-4, 619-20 and 622-4.]

r. 89L

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 —
 - (a) the chief executive officer must 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) the Registrar must serve a 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) —
 - (a) the appellant must file in the office of the Registrar 3 copies of every document relied upon by the appellant in the appellant's case; and
 - (b) the Registrar must serve a 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, the requirements under this regulation in relation to that document are taken to have been satisfied.

[Regulation 89L inserted: Gazette 21 Aug 2015 p. 3341-2; amended: Gazette 5 Mar 2019 p. 604-5.]

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 by completing and filing in the office of the Registrar 3 copies of —
 - (a) a statement of the chief executive officer's reformulated reasons; and

- (b) 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
 - (c) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case.
- (2) The statement, the summary and the reply must be in a form approved by the Chief Commissioner.
 - (2A) The Registrar must serve a copy of the statement, the summary and the reply on the appellant.
 - (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.

[Regulation 89M inserted: Gazette 21 Aug 2015 p. 3342; amended: Gazette 5 Mar 2019 p. 605-6.]

89N. Withdrawal or discontinuance of appeal against removal

- (1) An appellant may withdraw or wholly discontinue an appeal against removal, or withdraw any part of the appeal, by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the approved form.
- (2) The Registrar must serve a copy of the notice on the chief executive officer.

[Regulation 89N inserted: Gazette 5 Mar 2019 p. 606.]

Part 9 — Appeals under the *Police Act 1892* section 33P

89. Terms used

In this Part —

appeal against removal action means an appeal under the *Police Act 1892* section 33P;

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

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

police officer has the meaning given to ***member*** in the *Police Act 1892* section 33K;

removal action has the meaning given to that term in the *Police Act 1892* section 33K.

90. Notice of appeal against removal action

An appeal by a police officer against removal action is instituted under the *Police Act 1892* section 33P(2) if the police officer completes and files in the office of the Registrar 3 copies of a notice of appeal to the Commissioner of Police in the approved form.

[Regulation 90 inserted: Gazette 22 Dec 2009 p. 5271; amended: Gazette 5 Mar 2019 p. 622-4.]

91A. Service of notice of appeal against removal action

Within 7 days after an appeal against removal action is instituted, the Registrar must serve a copy of the notice instituting the appeal on the Commissioner of Police.

[Regulation 91A inserted: Gazette 22 Dec 2009 p. 5271; amended: Gazette 5 Mar 2019 p. 621.]

91. Response by Commissioner of Police

- (1) Except as otherwise directed by the Commission, the Commissioner of Police must respond to the notice of appeal within 28 days after the service of the notice of appeal by completing and filing in the office of the Registrar 3 copies of —
 - (a) a response stating the Commissioner of Police’s reasons for deciding to take removal action; and
 - (b) a list of all documents, as defined in regulation 20(1), that the Commissioner of Police considered before making the decision; and
 - (c) a summary of facts or issues of law relied upon by the Commissioner of Police, including any relevant matters set out in the *Police Act 1892* section 33Q(4); and
 - (d) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant’s case.
- (2) The response, the list of documents, the summary of facts and the reply must be in an approved form.
- (3) The Registrar must serve a copy of the response, the list of documents, the summary of facts and the reply on the appellant.

*[Regulation 91 amended: Gazette 22 Dec 2009 p. 5271;
5 Mar 2019 p. 607 and 619-20.]*

92. Documents relied on to be filed and served

- (1) Except as otherwise directed by the Commission, within 28 days of the service on the appellant of the documents referred to in regulation 91 —
 - (a) both the Commissioner of Police and the appellant must file in the office of the Registrar 3 copies of every document relied upon by that party in its case; and
 - (b) the Registrar must serve a copy of those documents on the other party.

- (2) If, under an agreement between the Commissioner of Police and the appellant, one party files a document on behalf of both parties, the requirements of subregulation (1) in relation to that document are taken to have been satisfied.

[Regulation 92 amended: Gazette 5 Mar 2019 p. 608.]

93. Notice of reformulated reasons under *Police Act 1892* s. 33R(10)

- (1) The notice of the reformulated reasons required under the *Police Act 1892* section 33R(10)(a) to be given to the Commission by the Commissioner of Police is to be given by completing and filing in the office of the Registrar 3 copies of —
- (a) a statement of the Commissioner of Police's reformulated reasons; and
 - (b) a summary of facts or issues of law relied upon by the Commissioner of Police in reformulating the reasons, including any relevant matters set out in the *Police Act 1892* section 33Q(4); and
 - (c) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant's case.
- (2) The statement, the summary of facts and the reply must be in an approved form.
- (2A) The Registrar must serve a copy of the statement, the summary of facts and the reply on the appellant.
- (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.

[Regulation 93 amended: Gazette 22 Dec 2009 p. 5271; 5 Mar 2019 p. 608-9.]

94. Withdrawal or discontinuance of appeal against removal

- (1) An appellant may withdraw or wholly discontinue an appeal against removal action, or withdraw any part of the appeal, by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the approved form.
- (2) The Registrar must serve a copy of the notice on the Commissioner of Police.

[Regulation 94 inserted: Gazette 5 Mar 2019 p. 609.]

**Part 9C — Appeals under the *Police Act 1892*
section 33ZI**

[Heading inserted: Gazette 29 Nov 2019 p. 4144.]

94A. Terms used

In this Part —

appeal against retirement on medical grounds means an appeal under the *Police Act 1892* section 33ZI;

appellant means a police officer who institutes an appeal against retirement on medical grounds;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

police officer has the meaning given to ***member*** in the *Police Act 1892* section 33ZB.

[Regulation 94A inserted: Gazette 29 Nov 2019 p. 4144.]

94B. Notice of appeal against retirement on medical grounds

An appeal by a police officer against retirement on medical grounds is instituted under the *Police Act 1892* section 33ZI(3) if the police officer completes and files in the office of the Registrar 3 copies of a notice of appeal to the Commissioner of Police in the approved form.

[Regulation 94B inserted: Gazette 29 Nov 2019 p. 4144.]

94C. Service of notice of appeal against retirement on medical grounds

Within 7 days after an appeal against retirement on medical grounds is instituted, the Registrar must serve a copy of the notice instituting the appeal on the Commissioner of Police.

[Regulation 94C inserted: Gazette 29 Nov 2019 p. 4144.]

94D. Response by Commissioner of Police

- (1) Except as otherwise directed by the Commission, the Commissioner of Police must respond to the notice of appeal within 28 days after the service of the notice of appeal by completing and filing in the office of the Registrar 3 copies of —
 - (a) a response stating the Commissioner of Police’s reasons for deciding that the appellant should be retired on medical grounds; and
 - (b) a list of all documents, as defined in regulation 20(1), that the Commissioner of Police considered before making the decision; and
 - (c) a summary of facts or issues of law relied upon by the Commissioner of Police, including any relevant matters set out in the *Police Act 1892* section 33ZJ(4); and
 - (d) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant’s case.
- (2) The response, the list of documents, the summary of facts and the reply must be in an approved form.
- (3) The Registrar must serve a copy of the response, the list of documents, the summary of facts and the reply on the appellant.

[Regulation 94D inserted: Gazette 29 Nov 2019 p. 4145.]

94E. Documents relied on to be filed and served

- (1) Except as otherwise directed by the Commission, within 28 days after the service on the appellant of the documents referred to in regulation 94D —
 - (a) both the Commissioner of Police and the appellant must file in the office of the Registrar 3 copies of every document relied upon by that party in its case; and
 - (b) the Registrar must serve a copy of those documents on the other party.

r. 94F

- (2) If, under an agreement between the Commissioner of Police and the appellant, one party files a document on behalf of both parties, the requirements of subregulation (1) in relation to that document are taken to have been satisfied.

[Regulation 94E inserted: Gazette 29 Nov 2019 p. 4145-6.]

94F. Notice of reformulated reasons under *Police Act 1892* s. 33ZK(11)

- (1) The notice of the reformulated reasons required under the *Police Act 1892* section 33ZK(11)(a) to be given to the Commission by the Commissioner of Police is to be given by completing and filing in the office of the Registrar 3 copies of —
- (a) a statement of the Commissioner of Police’s reformulated reasons; and
 - (b) a summary of facts or issues of law relied upon by the Commissioner of Police in reformulating the reasons, including any relevant matters set out in the *Police Act 1892* section 33ZJ(4); and
 - (c) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant’s case.
- (2) The statement, the summary of facts and the reply must be in an approved form.
- (3) The Registrar must serve a copy of the statement, the summary of facts and the reply on the appellant.
- (4) 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.

[Regulation 94F inserted: Gazette 29 Nov 2019 p. 4146-7.]

94G. Withdrawal or discontinuance of appeal against retirement on medical grounds

- (1) An appellant may withdraw or wholly discontinue an appeal against retirement on medical grounds, or withdraw any part of the appeal, by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the approved form.
- (2) The Registrar must serve a copy of the notice on the Commissioner of Police.

[Regulation 94G inserted: Gazette 29 Nov 2019 p. 4147.]

Part 9D — Disputes under the *Police Act 1892* Part 2D Division 3

[Heading inserted: SL 2022/6 r. 4.]

94H. Term used: Tribunal

In this Part —

Tribunal has the meaning given in the *Police Act 1892* section 33ZZA(2) in relation to the Police Compensation Tribunal.

[Regulation 94H inserted: SL 2022/6 r. 4.]

94I. Application of Part

This Part applies to a dispute lodged with the Tribunal under the *Police Act 1892* section 33ZZB.

[Regulation 94I inserted: SL 2022/6 r. 4.]

94J. Lodgment of dispute by medically retired member

The lodgment of a dispute by a medically retired member under the *Police Act 1892* section 33ZZB(1), (3) or (4) must be by notice of dispute in the approved form.

[Regulation 94J inserted: SL 2022/6 r. 4.]

94K. Lodgment of dispute on behalf of medically retired member

- (1) The lodgment of a dispute on behalf of a medically retired member under the *Police Act 1892* section 33ZZB(7) must be by notice of dispute in the approved form.
- (2) For the purposes of the *Police Act 1892* section 33ZZB(7)(b) and (c), a person lodging a dispute on behalf of a medically retired member must be a person who meets the requirements of subregulation (3) and is —
 - (a) the spouse, or de facto partner, of the medically retired member; or

- (b) closely associated with the medically retired member; or
 - (c) a next friend of the medically retired member for the purpose of the dispute; or
 - (d) a legal practitioner.
- (3) A person cannot lodge a dispute on behalf of a medically retired member unless the person is an adult who —
- (a) has no interest in the proceedings that is adverse to the interest of the medically retired member; and
 - (b) can fairly and competently conduct the proceedings for the medically retired member.
- (4) For the purposes of subregulation (2)(b), a person is closely associated with the medically retired member if, and only if, the person —
- (a) regularly provides, or arranges for the provision of, domestic services and support to the medically retired member; or
 - (b) maintains a close personal relationship with the medically retired member.
- (5) It is immaterial for the purposes of subregulation (4) whether or not the person is related in any way to the medically retired member.

[Regulation 94K inserted: SL 2022/6 r. 4.]

94L. Application of certain regulations

- (1) The provisions of these regulations that are set out in the Table apply to the lodgment of disputes with, and the hearing and determination of disputes by, the Tribunal as if —
- (a) references in the provisions to the Commission were references to the Tribunal; and

r. 94M

- (b) references in the provisions to a notice of application were references to a notice of dispute.

Table

Part 2 except r. 8(1), (3) and (4)	Part 3 except r. 13(3)(a) and Division 4
Part 4	Part 11 Division 2

- (2) Subregulation (1) applies —
- (a) except as otherwise provided by this Part; and
- (b) in a particular case subject to the direction of the Tribunal.

[Regulation 94L inserted: SL 2022/6 r. 4.]

94M. Procedures specific to Tribunal proceedings

- (1) A notice of dispute must be signed by —
- (a) the medically retired member who lodges the dispute with the Tribunal under the *Police Act 1892* section 33ZZB(1), (3) or (4); or
- (b) the person who lodges the dispute on behalf of a medically retired member under the *Police Act 1892* section 33ZZB(7).
- (2) Unless in a particular case the Chief Commissioner otherwise directs, the Registrar must present a notice of dispute to the Chief Commissioner for allocation of the matter as soon as practicable after the notice is filed.
- (3) The Registrar must endorse on the notice of dispute the time within which a response under regulation 14 must be filed.
- (4) The time required for filing a response is —
- (a) 21 days from the date of being served with the notice of dispute; or

- (b) if an application to the Tribunal for a shortened time for response is granted — the time determined by the Tribunal.
- (5) A summons to attend conciliation proceedings under the *Police Act 1892* section 33ZZF may be given by the Tribunal orally, in writing, by telephone or by email.
- (6) If the Tribunal gives a direction, or makes an order, under the *Police Act 1892* section 33ZZF(4) in writing or reduces it to writing (a **conciliation document**), the Tribunal may give directions (a **service direction**) as to service of the conciliation document.
- (7) The conciliation document must be —
 - (a) sealed; and
 - (b) served —
 - (i) if a service direction is made — in accordance with the service direction; or
 - (ii) otherwise — by the Registrar on the parties.

[Regulation 94M inserted: SL 2022/6 r. 4; amended: SL 2022/19 r. 5.]

[94N. *Deleted: SL 2022/75 r. 27.]*

Part 10 — Work Health and Safety Tribunal

[Heading inserted: SL 2022/19 r. 6.]

95. Term used: Tribunal

In this Part —

Tribunal means the Work Health and Safety Tribunal established by the *Work Health and Safety Act 2020* Schedule 1 clause 27(1).

[Regulation 95 inserted: SL 2022/19 r. 7.]

95A. Application of Part

This Part applies to an application made to the Tribunal under the *Work Health and Safety Act 2020*.

[Regulation 95A inserted: SL 2022/19 r. 7.]

96. Applications to Tribunal

An application must be in the approved form.

[Regulation 96 inserted: SL 2022/19 r. 7.]

97. Application of certain regulations

- (1) The provisions of these regulations that are set out in the Table to this subregulation apply to the making, hearing and determination of applications as if the references in the provisions to the Commission were references to the Tribunal.

Table

Part 2 except r. 8(1), (3) and (4)	Part 3 except r. 13(3)(a) and Division 4
Part 4	Part 11 Division 2

- (2) Subregulation (1) applies —
- (a) except as otherwise provided by this Part; and
 - (b) in a particular case subject to the direction of the Tribunal.

[Regulation 97 amended: Gazette 16 Mar 2012 p. 1252; 5 Mar 2019 p. 610; SL 2022/6 r. 5; SL 2022/19 r. 8.]

98. Procedures specific to Tribunal proceedings

- (1) An application must be signed by the applicant or, where applicable, the applicant's solicitor or agent and, where necessary, sealed by the applicant.
- (2) Unless in a particular case the Chief Commissioner otherwise directs, the Registrar must present an application to the Chief Commissioner for allocation of the matter as soon as practicable after the application is filed.
- (3) After allocation of a matter the Tribunal must give to the Registrar directions, by way of endorsement on the reverse of, or by attachment to, the application, as to service of copies of the application.

[(4), (5) deleted]

- (6) If the Tribunal gives or makes a direction, order or declaration under the *Work Health and Safety Act 2020* Schedule 1 clause 30(3) in writing or reduces it to writing (a **conciliation document**), the Tribunal may give a direction (a **service direction**) as to service of the conciliation document.
- (7) The conciliation document must be —
 - (a) sealed; and
 - (b) served —
 - (i) if a service direction is made — in accordance with the service direction; or

r. 98

(ii) otherwise — by the Registrar on the parties.

*[Regulation 98 amended: Gazette 5 Mar 2019 p. 610;
SL 2022/19 r. 9.]*

[99. *Deleted: SL 2022/75 r. 28.]*

Part 10A — Road Freight Transport Industry Tribunal

[Heading inserted: Gazette 10 Jun 2008 p. 2492.]

99A. Terms used

In this Part —

applicant means a person who refers a dispute or matter to the Tribunal under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 40;

Tribunal has the meaning given to that term in the *Owner-Drivers (Contracts and Disputes) Act 2007* section 38(2).

[Regulation 99A inserted: Gazette 10 Jun 2008 p. 2492.]

99B. Referrals to Tribunal

The referral of a dispute or matter to the Tribunal under the *Owner-Drivers (Contracts and Disputes) Act 2007* must be in the approved form.

*[Regulation 99B inserted: Gazette 10 Jun 2008 p. 2492;
amended: Gazette 5 Mar 2019 p. 622-5; SL 2022/19 r. 10.]*

99C. Application of certain regulations

- (1) The provisions of these regulations that are set out in the Table to this subregulation apply to the referral of disputes or matters to, or the hearing or determination of disputes or matters by, the Tribunal as if the references in the provisions to the Commission were references to the Tribunal.

Table

Part 2 except r. 8(1), (3) and (4)	Part 3 except r. 13(3)(a) and Division 4
Part 4	Part 11 Division 2

r. 99D

- (2) Subregulation (1) applies —
- (a) except as otherwise provided by this Part; and
 - (b) in a particular case subject to the direction of the Tribunal.

[Regulation 99C inserted: Gazette 16 Mar 2012 p. 1252-3; amended: Gazette 5 Mar 2019 p. 611; SL 2022/6 r. 6; SL 2022/19 r. 11.]

99D. Procedures specific to Tribunal proceedings

- (1) A referral must be signed by the applicant or, where applicable, the applicant's solicitor or agent and, where necessary, sealed by the applicant.
- (2) Unless in a particular case the Chief Commissioner otherwise directs, the Registrar must present a referral to the Chief Commissioner for allocation of the matter as soon as practicable after the referral is filed.
- (3) The Registrar must endorse on the referral the time within which a response under regulation 14 must be filed.
- (4) The time within which a response must be filed is —
 - (a) 21 days after the respondent is served with the referral; or
 - (b) if an application to the Tribunal for a shortened time for response is granted — the time determined by the Tribunal.

[(5)-(7) deleted]

- (8) The Tribunal may orally, in writing, by telephone or email issue a summons to attend conciliation proceedings under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 45.
- (9) If a copy of the referral has been sent by email to the respondent by an officer of the Commission at the direction of the Tribunal, the Tribunal may, before the response is filed, arrange a

conference under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 44(2)(b).

- (10) If the Tribunal gives or makes a direction, order or declaration under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 44(3) in writing or reduces it to writing (a **conciliation document**), the Tribunal may give a direction (a **service direction**) as to service of the conciliation document.
- (11) The conciliation document must be —
- (a) sealed; and
 - (b) served —
 - (i) if a service direction is made — in accordance with the service direction; or
 - (ii) otherwise — by the Registrar on the parties.

[Regulation 99D inserted: Gazette 10 Jun 2008 p. 2492-3; amended: Gazette 4 Jul 2014 p. 2390; 5 Mar 2019 p. 611, 619-20 and 622-5; SL 2022/6 r. 7; SL 2022/19 r. 12.]

[99E. *Deleted: SL 2022/75 r. 29.]*

Part 11 — Appeals generally

Division 1 — Appeals to Commission

100. Appeals under section 97VM

- (1) An appeal to the Commission under section 97VM of the Act against a refusal by the Registrar to register the EEA may be commenced by filing a notice of appeal in the approved form.
- (2) The appellant must serve a copy of the appeal on each other party to the EEA the subject of the appeal.

[Regulation 100 amended: Gazette 5 Mar 2019 p. 622-5.]

101. Appeal under Vocational Education and Training Act 1996

- (1) An appeal to the Commission made under the *Vocational Education and Training Act 1996* section 60F(8) or 60G(4) or under regulations made under section 60(f)(ii) of that Act may be commenced by lodging in the office of the Registrar a notice of appeal in the approved form.
- (2) The notice of appeal must be lodged within 14 days from the date of the decision against which the appeal is brought or such longer period as the Commission may allow.
- (3A) The Registrar is to —
 - (a) serve a copy of the notice of appeal on each of the parties, other than the appellant; and
 - (b) forward the notice of appeal to the Chief Commissioner for allocation.
- (3B) The appeal is not to be listed for hearing until subregulation (3A) has been complied with.
- (3C) An appeal against a decision does not stay the operation of the decision unless the Commission orders otherwise.

- (3) The Commission is to give notice to the parties to the appeal of the time and date fixed for the hearing of the appeal.
- (4) Except with the agreement of all parties, the notice is not to be given less than 7 days before the day fixed for the hearing.
- (5) On determination of the appeal the Registrar is to notify the parties to the appeal of the Commission's decision.

[Regulation 101 amended: Gazette 16 Jun 2009 p. 2189-90; 5 Mar 2019 p. 612 and 622-5.]

102A. Review of decisions of Construction Industry Long Service Leave Payments Board

- (1) In this regulation —
Board has the meaning given in the *Construction Industry Portable Paid Long Service Leave Act 1985* section 3(1);
reviewable decision has the meaning given in the *Construction Industry Portable Paid Long Service Leave Act 1985* section 50(1).
- (2) A reviewable decision may be referred for review to the Commission under the *Construction Industry Portable Paid Long Service Leave Act 1985* section 50 by lodging, within 21 days from the date of that decision, a notice of referral in the approved form.
- (3) After a notice of referral is lodged under subregulation (2), the Registrar must serve a copy of the notice on —
 - (a) the chief executive officer of the Board; and
 - (b) each other person who was a party to the proceedings before the Board.
- (4) Unless in a particular case the Chief Commissioner otherwise directs, the Registrar is to present a notice of referral to the Chief Commissioner for allocation of the matter as soon as practicable after the notice is lodged.

- (5) Subject to subregulation (6), the filing of a notice of referral lodged under subregulation (2) stays the operation of the reviewable decision concerned pending the determination of the review of that decision.
- (6) On application by any person referred to in subregulation (3)(b), the Commission may, subject to such conditions as it may determine, direct that a reviewable decision that is referred for review continues to operate according to its tenor pending the determination of the review.
- (7) After an application is lodged under subregulation (6), the Registrar must serve a copy of the application on —
 - (a) the chief executive officer of the Board; and
 - (b) each other person who was a party to the proceedings before the Board.

[Regulation 102A inserted: Gazette 16 Mar 2012 p. 1253-4; amended: Gazette 5 Mar 2019 p. 613 and 622-5.]

Division 2 — Appeals to Full Bench

102. Appeals to Full Bench

- (1) An appeal to the Full Bench from a decision of the Commission may be commenced by filing a notice of appeal in the approved form.
- (2) The notice of appeal must clearly and concisely set out the grounds of appeal and what alternative decision the appellant seeks.
- (3) Without affecting the operation of subregulation (2), it is not sufficient to allege that a decision or part of it is against the evidence or the weight of evidence or that it is wrong in law. The notice must specify the particulars relied on to demonstrate that it is against the evidence and the weight of evidence and the specific reasons why it is alleged to be wrong in law.

- (4) In the case of an appeal from a decision that is a finding, the statement setting out the grounds of appeal must, in addition, briefly state the reasons why it is considered that the matter is of such importance that in the public interest an appeal should lie.
- (5) After the notice of appeal is filed, the Registrar must serve a copy of the notice on each person who was a party to the proceedings before the Commission or on the agent or solicitor who represented that party.
- (6) On application made by any person who has a sufficient interest the presiding commissioner may, subject to such conditions as the presiding commissioner determines, order that the operation of the decision appealed against be stayed wholly or in part pending the hearing and determination of the appeal.
- (7) An application made under subregulation (6) must —
 - (a) be in the form of a notice of application in the approved form; and
 - (b) be supported by a statutory declaration setting out the facts relied on to support the application.
- (8) Before returning the stamped copies of the application for an order staying the operation of a decision the presiding commissioner is to endorse the same with the date of hearing and any necessary directions.
- (9) After an application is made under subregulation (6), the Registrar must serve a copy of the application on each person referred to in subregulation (5).
- (10) Within 14 days of filing a notice of appeal, the appellant must —
 - (a) lodge 3 copies of an appeal book prepared and bound in an approved form; and
 - (b) serve a copy of the appeal book on each person referred to in subregulation (5).

- (10A) If a decision of the Commission that is the subject of an appeal was made in respect of proceedings that were formally joined and matters that were heard and determined together, the appellant may lodge and serve under subregulation (10) the required copies of 1 appeal book that contains the documents required under subregulation (11A) for all of those matters.
- (11A) Unless in a particular case the presiding commissioner directs otherwise, each appeal book must contain the following —
- (a) a copy of the notice of appeal;
 - (b) a copy of the application or reference instituting the proceedings before the Commission;
 - (c) a copy of any response or counter-proposal filed in the proceedings;
 - (d) where applicable, a copy of that part or those parts of the settled issues containing the matters relevant to the appeal that were before the Commission;
 - (e) any written submissions, or outline of submissions, provided to the Commission;
 - (f) a copy of the decision that is the subject of the appeal and the Commission's reasons for that decision;
 - (g) a list of the page numbers of the transcript of the proceedings at which reference is made to the subject matter of the appeal;
 - (h) a copy of all relevant exhibits tendered during the proceedings;
 - (i) a copy of any other document which will be required by the Full Bench to determine the appeal, including any further particulars of the claim or response filed in the proceedings.
- (11) The Registrar is not to accept an appeal book unless all documents contained in the appeal book are clearly legible.
- (12) If a person who was a party to the proceedings before the Commission proposes to argue at the hearing of the appeal that

the decision of the Commission should be upheld on grounds other than those relied on by the Commission in that decision, the person must, within 14 days after service of a copy of the appeal book, file a notice of contention in the approved form that sets out those other grounds.

- (13) The provisions of these regulations relating to appeals to the Full Bench from a decision of the Commission apply, so far as is practicable and with such modifications to forms as are necessary, to and in relation to appeals to the Full Bench from a decision of an industrial magistrates court.

[Regulation 102 amended: Gazette 22 Jan 2008 p. 193; 10 Jul 2009 p. 2740; 19 Dec 2018 p. 4840; 5 Mar 2019 p. 613-14, 619-20 and 622-5.]

103. Procedure for listing matters before Full Bench

- (1) This regulation applies to the procedure for listing of matters before the Full Bench in proceedings under section 49 of the Act.
- (2) The Registrar, after serving the notice of appeal on the parties required to be served, and after satisfying himself or herself and certifying that regulation 102(10)(b), (11A) and (11) have been complied with, is to transmit the file and all relevant documents as required by the Chief Commissioner to the Chief Commissioner.

[(3), (4) deleted]

- (5) Despite subregulation (2), the Registrar may forward the file and documents to the Chief Commissioner for listing where any time limit imposed by the Act or regulation 102 has not been complied with, and an application to extend time for such compliance has been filed and served.
- (6) The Chief Commissioner is to assign commissioners to the Full Bench, and the presiding commissioner is to list the appeal for hearing.

[(7) deleted]

- (8) The presiding commissioner is to cause the parties to be notified of the date of hearing in the approved form.
- (9) After any such appeal is listed for hearing, a party may upon an application to the Full Bench in the approved form and these regulations apply to expedite the hearing of the appeal.

[Regulation 103 amended: Gazette 28 Apr 2006 p. 1652; 10 Jul 2009 p. 2741; 19 Dec 2018 p. 4840-1; 5 Mar 2019 p. 615 and 622-5.]

103A. Discontinuance of appeal to Full Bench

- (1) An appeal to the Full Bench cannot be discontinued other than under an order of the Full Bench.
- (2) The appellant in an appeal from a decision of the Commission may at any time apply to the Full Bench for an order discontinuing the appeal by lodging an application in the approved form.
- (3) The Registrar must serve a copy of the application on each person who was a party to the proceedings before the Commission, or on the agent or solicitor who represented that party.
- (4) On an application for an order to discontinue an appeal the Full Bench, after giving the parties served with the application an opportunity to be heard or make submissions —
 - (a) may grant or refuse the application; and
 - (b) may in addition make any other order that is just.

[Regulation 103A inserted: Gazette 22 Jan 2008 p. 193-4; amended: Gazette 5 Mar 2019 p. 615.]

[104. Deleted: Gazette 19 Dec 2018 p. 4841.]

Part 12 — Public service arbitration

105. Terms used

In this Part, unless the contrary intention appears, *Arbitrator*, *Board*, *employer* and *government officer* have the meanings given to those terms in Part IIA Division 2 of the Act.

106. Reclassification applications

- (1) An application in respect of a claim under section 80E(2)(a) and (b) of the Act may be commenced by filing an application in the approved form.
- (2) The application must clearly and concisely set out the grounds of the application and must be signed by the applicant or the applicant's agent.
- (3) A claim under section 80E(2)(a) or (b) of the Act may be made at any time, provided however that in respect of a claim under section 80E(2)(a) of the Act not more than one claim may be made in relation to the same office within a period of 12 months unless the duties and responsibilities of that office are altered within this period.
- (4) The Registrar must serve a copy of the application on the applicant's employer.
- (5) The applicant may apply to the Registrar for a date of hearing.
- (6) An applicant must lodge in the office of the Registrar a written resume of the evidence the applicant intends to adduce in support of the application at least 3 working days before the date fixed for hearing the application.

[Regulation 106 amended: Gazette 5 Mar 2019 p. 615-16.]

107. Public Service Appeal Board

- (1) An appeal to the Board under section 80I(1) of the Act may be commenced by filing a notice of appeal in the approved form

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

- (2) An appeal may be commenced within 21 days after the date of the decision, finding, determination or recommendation in respect of which the appeal is made or where that decision, finding, determination or recommendation is published in the *Government Gazette* within one month of the date of that publication.
- (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.
- (5) The Registrar must serve a copy of the notice of appeal on the respondent.
- (6A) A respondent that is served with the notice of appeal and that wants to respond to it may file a response in the approved form within 21 days of being served with the notice of appeal.
- (6) The appellant may request that the appeal be set down for hearing.
- (7) The Chairman is to fix the date, time and place for the hearing of the appeal, arrange a sitting of the Board and notify the parties.
- (8) The parties are to be given not less than 14 days' notice of the hearing of the appeal, unless the Board otherwise directs in a particular case.
- (9) An appeal cannot be heard by the Board unless the appellant supplies the Board at least 4 days prior to the hearing with 3 copies of a statement in writing of the facts on which the appellant relies.

- (10) The Registrar must serve a copy of the statement on the other party to the appeal or the party's representative.

[Regulation 107 amended: Gazette 21 Aug 2015 p. 3343; 5 Mar 2019 p. 616-17, 619-20 and 622-5.]

108. Nomination of agent for claim under s. 80E(2)

Where an applicant in the application nominates a person to act as the applicant's agent, that person is taken to be appointed as his or her agent in accordance with the provisions of regulation 63 and the provisions of that regulation otherwise apply with such modifications as are necessary to a claim made under section 80E(2)(a) and (b) of the Act.

[Regulation 108 amended: Gazette 5 Mar 2019 p. 617.]

Part 13 — Railways Classification Board

109. Terms used

In this Part, unless the contrary intention appears, *Board*, *Public Transport Authority*, *railway officer* and *salaried position* have the meanings given to those terms in Part IIA Division 3 of the Act.

110. Number of copies of documents for Board

Except where otherwise provided by these regulations or otherwise directed by the Chairman of the Board 3 copies of every document for the use of the Board together with at least as many documents as there are parties must be filed or lodged in the office of the Registrar.

111. Classification appeals

- (1) An application in respect of a matter referred to in section 80R(2) of the Act may be commenced by notice of appeal in the approved form.
- (2) The notice of appeal must clearly and concisely set out the grounds of appeal and must be signed by the appellant or the appellant's agent.
- (3) An application may be commenced at any time but not more than one application can be made concerning the classification or reclassification of the same salaried position within a period of 12 months unless the duties and responsibilities of that position have altered within that period.
- (4) The Registrar must serve a copy of the notice of appeal on the Public Transport Authority.
- (5) The appellant may apply to the Registrar for a date of hearing.
- (6) An appellant must lodge in the office of the Registrar 3 copies of a written statement of the evidence the appellant intends to

adduce in support of the appeal at least 3 working days before the date fixed for hearing the appeal.

[Regulation 111 amended: Gazette 5 Mar 2019 p. 618 and 622-5.]

112. Nomination of agent for appeal of claim under section 80R(2)

Where an appellant in the notice of appeal nominates a person to act as the appellant's agent that person is taken to be appointed as his or her agent in accordance with the provisions of regulation 63 and the provisions of that regulation otherwise apply with such modifications as are necessary to a claim made under section 80R(2) of the Act.

113. Conferences

A conference held under section 32 or 44 of the Act must be convened by and held before the Chairman who may exercise all of the powers vested in the Commission under that section.

114. Chambers

An application required by these regulations to be made in Chambers must be made before the Chairman and be determined by the Chairman.

115. Service on Public Transport Authority

Service of any document or notice for the purposes of the Act or these regulations may in addition to any other method of service prescribed by these regulations be effected by personal delivery to the head of the branch to whom the railway officer is ultimately responsible, or by post to the address of the Public Transport Authority.

116. Directions

The Chairman is to give all such directions and do all such things as the Chairman considers necessary or expedient to give effect to the intention of the Act and these regulations.

Part 14 — Miscellaneous

117. Nomination of employees' representative

- (1) Nomination of an employees' representative by an organisation or association of employees must be made to the Chief Commissioner in writing.
- (2) Nomination of an employers' representative must be made in writing by not less than 3 employers concerned or by the actual number concerned if less than 3.
- (3) Where more than one organisation of employees is a party to the award, the manner of nomination and appointment of employees' representatives is to be as directed by the Chief Commissioner.
- (4) Where an award applies to more than one location, application may be made to the Chief Commissioner to limit the appointment of representatives or any of them to a specified location or to specified locations.

118. Appeals from Boards of Reference

- (1) An appeal from a decision of a Board of Reference must be in the approved form and, as soon as practicable after the appeal is filed, the Registrar must serve a copy of it on every other party to the proceedings before the Board of Reference or on the solicitor or agent who represented that party.
- (2) Subject to subregulation (3), the filing of an appeal under subregulation (1) stays the operation of the decision that is the subject of the appeal.
- (3) On application made by any person referred to in subregulation (1) the Commission may, subject to such conditions as the Commission may determine, direct that a decision that is subject to an appeal continues to operate according to its tenor pending the determination of the appeal.

- (4) After being filed, an application under subregulation (3) must be served by the Registrar as soon as practicable on each other person referred to in subregulation (1) but before effecting service the Registrar must ascertain the date of hearing and endorse it on the notice of application.

[Regulation 118 amended: Gazette 5 Mar 2019 p. 618.]

119. Notice of certain orders

Where the Commission in Court Session makes —

- (a) a General Order under section 50 of the Act; or
- (b) an order under section 51F of the Act,

that, under section 23(2)(b) of the Act, applies in substitution for, or in addition to any Act specified in the order, the Registrar is, as soon as practicable after the making of the order, to give notice of the order in the *Industrial Gazette* and, in 2 consecutive weeks, in a newspaper having circulation throughout the State.

120. Remuneration and reimbursement of expenses for members of constituent authorities

- (1) Subject to this regulation, a member of a constituent authority is entitled to be paid such remuneration as the Chief Commissioner from time to time determines.
- (2A) The Chief Commissioner is to cause notice of each determination under subregulation (1) to be published in the required manner.
- (2) No remuneration is payable to a member of a constituent authority for services as a member where the member is employed (whether in a permanent capacity or not) by a public authority and the member continues to receive the member's usual rate of remuneration from his or her employer in respect of that employment while attending on the constituent authority in the course of that employment.

r. 120

- (3) Where a member of a constituent authority is employed (whether in a permanent capacity or not) by a public authority and the member attends on the constituent authority outside the member's normal work hours as an extraneous duty but the remuneration paid to the member by his or her employer in the member's normal employment is not affected by his or her attendance on the constituent authority, the remuneration payable to the member for services as a member is to be 50% of the remuneration determined under subregulation (1).
- (4) Where a member of the constituent authority is employed (whether in a permanent capacity or not) by a public authority and the member does not continue to receive his or her usual rate of remuneration for services in attending a sitting of the constituent authority at the direction of the Chairman, the member may be paid an amount equal to the amount the member would otherwise not receive.
- (5) A secretary or official of an organisation who is remunerated by the organisation for the time his or her services are used as a member of the constituent authority must not be remunerated in accordance with subregulation (1) unless, in the discretion of the Chairman, the circumstances are such that full or part remuneration should be so payable by the constituent authority.
- (6) Reimbursement for out of pocket expenses incurred by a member of a constituent authority attending a sitting of the constituent authority including reimbursement for travelling expenses is to be as determined from time to time by the Chief Commissioner.
- (7) The provisions of this regulation do not apply to a member of a constituent authority who is a Commissioner.

(8) In this regulation —

member of a constituent authority includes the member's deputy when and so often as the deputy acts in the place of that member.

*[Regulation 120 amended: Gazette 31 Oct 2008 p. 4767-8;
5 Mar 2019 p. 618-19.]*

[121. *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

[Schedule 1 deleted: SL 2022/75 r. 30.]



Notes

This is a compilation of the *Industrial Relations Commission Regulations 2005* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Citation	Published	Commencement
<i>Industrial Relations Commission Regulations 2005</i>	12 Aug 2005 p. 3685-812	1 Sep 2005 (see r. 2)
<i>Industrial Relations Commission Amendment Regulations 2006</i>	28 Apr 2006 p. 1650-6	28 Apr 2006
<i>Industrial Relations Commission Amendment Regulations 2007</i>	27 Mar 2007 p. 1405-6	28 Mar 2007 (see r. 2 and <i>Gazette</i> 27 Mar 2007 p. 1405)
<i>Industrial Relations Commission Amendment Regulations 2008</i>	22 Jan 2008 p. 192-4	r. 1 and 2: 22 Jan 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jan 2008 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations (No. 3) 2008</i>	6 May 2008 p. 1757	15 May 2010 (see r. 2 and <i>Gazette</i> 14 May 2010 p. 2015)
Reprint 1: The Industrial Relations Commission Regulations 2005 as at 16 May 2008 (includes amendments listed above except those in the <i>Industrial Relations Commission Amendment Regulations (No. 3) 2008</i>)		
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2008</i>	10 Jun 2008 p. 2491-4	r. 1 and 2: 10 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Aug 2008 ¹ (see r. 2(b) and Act No. 7 of 2007 s. 58)
<i>Industrial Relations Commission Amendment Regulations (No. 4) 2008</i>	29 Jul 2008 p. 3420	r. 1 and 2: 29 Jul 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 15 May 2010 (see r. 2(b) and <i>Gazette</i> 14 May 2010 p. 2015)
<i>Industrial Relations Commission Amendment Regulations (No. 5) 2008</i>	31 Oct 2008 p. 4767-8	r. 1 and 2: 31 Oct 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Nov 2008 (see r. 2(b))

Citation	Published	Commencement
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2009</i>	16 Jun 2009 p. 2189-91	r. 1 and 2: 16 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 17 Jun 2009 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations 2009</i>	10 Jul 2009 p. 2739-44	r. 1 and 2: 10 Jul 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 11 Jul 2009 (see r. 2(b))
Reprint 2: The Industrial Relations Commission Regulations 2005 as at 2 Oct 2009 (includes amendments listed above except those in the <i>Industrial Relations Commission Amendment Regulations (No. 3) 2008</i> and the <i>Industrial Relations Commission Amendment Regulations (No. 4) 2008</i> other than r. 1 and 2)		
<i>Industrial Relations Commission Amendment Regulations (No. 3) 2009</i>	22 Dec 2009 p. 5270-2	r. 1 and 2: 22 Dec 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Dec 2009 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations 2010</i>	9 Jul 2010 p. 3239-40	r. 1 and 2: 9 Jul 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 14 Jul 2010 (see r. 2(b) and <i>Gazette</i> 13 Jul 2010 p. 3291)
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2010</i>	12 Oct 2010 p. 5153-5	r. 1 and 2: 12 Oct 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Oct 2010 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations 2012</i>	16 Mar 2012 p. 1252-5	r. 1 and 2: 16 Mar 2012 (see r. 2(a)); Regulations other than r. 1, 2, 6 and 7: 17 Mar 2012 (see r. 2(c)); r. 6 and 7: 1 Apr 2012 (see r. 2(b) and <i>Gazette</i> 16 Mar 2012 p. 1246)
<i>Industrial Relations Commission Amendment Regulations 2014</i>	4 Jul 2014 p. 2389-417	r. 1 and 2: 4 Jul 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 5 Jul 2014 (see r. 2(b))
Reprint 3: The Industrial Relations Commission Regulations 2005 as at 12 Sep 2014 (includes amendments listed above)		
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2015</i>	9 Jan 2015 p. 211-12	r. 1 and 2: 9 Jan 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Jan 2015 (see r. 2(b))

Industrial Relations Commission Regulations 2005**Notes** Compilation table

Citation	Published	Commencement
<i>Industrial Relations Commission Amendment Regulations 2015</i>	15 May 2015 p. 1721-5	r. 1 and 2: 15 May 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 16 May 2015 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations (No. 3) 2015</i>	21 Aug 2015 p. 3336-46	r. 1 and 2: 21 Aug 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Aug 2015 (see r. 2(b) and <i>Gazette</i> 21 Aug 2015 p. 3310)
<i>Industrial Relations Commission Amendment Regulations 2018</i>	12 Jan 2018 p. 116-17	r. 1 and 2: 12 Jan 2018 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Jan 2018 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations (No. 3) 2018</i>	19 Dec 2018 p. 4837-41	r. 1 and 2: 19 Dec 2018 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Dec 2018 (see r. 2(b) and <i>Gazette</i> 18 Dec 2018 p. 4835)
<i>Industrial Relations Commission Amendment Regulations 2019</i>	5 Mar 2019 p. 585-641	r. 1 and 2: 5 Mar 2019 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Mar 2019 (see r. 2(b))
Reprint 4: The Industrial Relations Commission Regulations 2005 as at 19 Jul 2019 (includes amendments listed above)		
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2019</i>	29 Nov 2019 p. 4143-7	r. 1 and 2: 29 Nov 2019 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Nov 2019 (see r. 2(b) and <i>Gazette</i> 29 Nov 2019 p. 4133)
<i>Industrial Relations Commission Amendment Regulations (No. 2) 2022</i>	SL 2022/6 21 Jan 2022	r. 1 and 2: 21 Jan 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Jan 2022 (see r. 2(b))
<i>Industrial Relations Commission Amendment Regulations 2022</i>	SL 2022/19 11 Mar 2022	r. 1 and 2: 11 Mar 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 31 Mar 2022 (see r. 2(b) and SL 2022/18 cl. 2)
<i>Industrial Relations Commission Amendment Regulations (No. 3) 2022</i>	SL 2022/75 17 Jun 2022	r. 1 and 2: 17 Jun 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 20 Jun 2022 (see r. 2(b))

Other notes

- ¹ Although the commencement date of 1 Jul 2008 was specified in the *Industrial Relations Commission Amendment Regulations (No. 2) 2008*, because of the *Interpretation Act 1984* s. 25(3) those regulations came into operation on 1 Aug 2008 when the *Owner-Drivers (Contracts and Disputes) Act 2007* Sch. 3 cl. 1 came into operation.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
appeal against removal action	89A, 89H, 89
appeal against retirement on medical grounds	94A
appellant	89A, 89H, 89, 94A
applicant	99A
Arbitrator	105
Board	102A(1), 105, 109
chief executive officer	89A, 89H
Commission	3
Commissioner of Police	89, 94A
conciliation document	29(1), 94M(6), 98(6), 99D(10)
custodial officer	89H
decision	65(3)
discovery	20(1)
document	20(1)
electronic document	3
employer	105
employing authority	63A(1)
expert's report	45(1)
government officer	105
inspection	20(1)
interested person	86(1)
lodged electronically	3
member of a constituent authority	120(8)
notice to admit	23(1)
person to be joined	18(1)
police officer	89, 94A
prison officer	89A
Public Transport Authority	109
railway officer	109
Registrar	3
removal action	89A, 89H, 89
reviewable decision	102A(1)
salaried position	109
section 72A application	73(1)
service direction	29(1), 94M(6), 98(6), 99D(10)
substantive proceedings	18(1)
Tribunal	94H, 95, 99A
warrant	63(1)
writing	3

