



Western Australia

Equal Opportunity Regulations 1986

Reprinted as at 23 March 2001

Western Australia

Equal Opportunity Regulations 1986

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Schedule 1

Notes



Western Australia

Reprinted under the
Reprints Act 1984 as
at 23 March 2001

Equal Opportunity Act 1984

Equal Opportunity Regulations 1986

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Equal Opportunity Regulations 1986*¹.

2. Forms

The forms to be used in relation to matters arising under the Act shall be those set out in Schedule 1, but where no form is prescribed then a form shall be adapted or prepared so as to deal with the matter in question.

*[Regulation 2 amended in Gazette 9 November 1990 p. 5529;
disallowed in Gazette 25 January 1991 p. 326.]*

Part 2 — Complaints

3. Form of complaint

A complaint lodged with the Commissioner under section 83 of the Act shall be in writing and, if the Commissioner requires, shall be in the form set out in Form 1 in Schedule 1.

Part 3 — Notification of inquiry

4. Notification of preliminary hearing

- (1) When a complaint has been referred to the Tribunal in accordance with section 90(2), 93(1) or 107(1) of the Act, the registrar shall serve upon all parties named by the Commissioner or the Minister, as the case may be, as parties to the complaint a Notice of Preliminary Hearing.
- (2) A Notice of Preliminary Hearing shall give notice to the parties of the time and place at which the preliminary hearing shall be heard.
- (3) A Notice of Preliminary Hearing shall be in the form set out in Form 2 in Schedule 1.
- (4) The registrar shall serve upon each party a Notice of Preliminary Hearing by either of the following means —
 - (a) by delivering it personally to the person required to be served; or
 - (b) by registered post addressed to the usual or last known place of abode or business of such person.
- (5) It shall be sufficient service if the Notice of Preliminary Hearing is served not less than 7 days before the day set for the preliminary hearing.
- (6) If any party fails to attend a preliminary hearing, the President may direct the registrar to produce to the Tribunal an affidavit of service setting out the time at which and the manner by which service was effected upon that party.

Part 4 — Preliminary hearing

5. Address for service

- (1) Prior to or at the preliminary hearing, each party served with a Notice of Preliminary Hearing shall file with the registrar a Notice of Address for Service and the address for service given in that notice shall be the place at which all documents in the proceedings shall be served on that party.
- (2) A Notice of Address for Service may be in the form of a letter to the registrar setting out an address in Western Australia to which documents may be delivered or posted.
- (3) The registrar shall cause a copy of each Notice of Address for Service filed with him to be served upon every other party to the inquiry.

6. Matters to be dealt without preliminary hearing

- (1) At the preliminary hearing the Tribunal shall determine whether any complaint shall be dealt with as a representative complaint.
- (2) At the preliminary hearing the Tribunal shall consider any application that it exercise its powers under section 109 to join further parties to the inquiry.
- (3) Any person joined as a party to an inquiry shall file within such time as may be directed by the Tribunal a Notice of Address for Service and the registrar shall deal with that Notice in accordance with regulation 5(3).

7. Points of Claim may be required

- (1) At the preliminary hearing or at any other time, the Tribunal may direct the complainant to file with the registrar and serve upon every other party to the inquiry Points of Claim which set out in numbered paragraphs as briefly as possible the material facts upon which the complainant relies and the relief (if any) which the complainant seeks.

- (2) Where the Tribunal directs that Points of Claim shall be filed and served, they shall be filed and served not later than 14 days after the direction of the Tribunal unless, in a particular inquiry, the Tribunal directs otherwise.

8. Defence

- (1) At the preliminary hearing or at any other time, the Tribunal may direct the respondent to file with the registrar and serve upon every other party to the inquiry Points of Defence which respond to the allegations set out in the Points of Claim and which set out any affirmative defence upon which the respondent relies.
- (2) Where the Tribunal directs that Points of Defence shall be filed and served, they shall be filed and served not later than 14 days after the day on which the respondent is served with the Points of Claim unless, in a particular inquiry, the Tribunal directs otherwise.

9. Discovery

- (1) At the preliminary hearing or at any other time, the Tribunal may on the application of any party (the applicant) order any other party (the other party) to provide for the inspection of the applicant the documents set out in a Request for Discovery.
- (2) Where an order is made under subregulation (1), a Request for Discovery may be made by way of letter and shall be served on the other party.
- (3) A party who is ordered to provide documents for inspection and who receives a Request for Discovery shall notify the applicant within 14 days after the service of that Request of a time and place at which the documents set out in that Request will be made available for inspection and whether there is any objection to the applicant inspecting any of the documents set out in that Request.

r. 10

- (4) A party inspecting documents in accordance with a Request for Discovery may at his own expense take copies of those documents.
- (5) Unless the Tribunal in a particular inquiry orders otherwise, a Request for Discovery shall not be served until Points of Claim and Points of Defence have been filed and served.

10. Request for Information

- (1) At the preliminary hearing or at any other time, the Tribunal may on the application of any party (the applicant) order any other party (the other party) to provide answers on oath to questions set out in a Request for Information.
- (2) Where an order is made under subregulation (1), a Request for Information may be made by way of letter and shall be served on the other party.
- (3) A party who is ordered to provide answers on oath to questions set out in a Request for Information and who receives a Request for Information shall within 14 days after the service of that Request serve upon the applicant an affidavit in which the questions set out in the Request for Information are answered and in which any objections to answering any question are detailed.
- (4) Unless the Tribunal in a particular inquiry orders otherwise, a Request for Information shall not be served until Points of Claim and Points of Defence have been filed and served.

Part 5 — Evidence and procedure generally

11. Application of Part

Without limiting the generality of section 120 of the Act, the regulations in this Part apply to the manner in which the Tribunal may receive evidence and submissions at any inquiry.

12. Affidavits

- (1) Any party to an inquiry may lodge with the registrar and serve upon every other party to the inquiry, an affidavit from any person and, subject to subregulation (5), the Tribunal may accept that affidavit as evidence for the purposes of the inquiry.
- (2) An affidavit shall be in the form required by Order 37 of the *Supreme Court Rules*.
- (3) An affidavit may contain statements of information or belief with the sources and grounds of that information.
- (4) Any party to an inquiry served with an affidavit may within 7 days after the service of that affidavit serve upon the party seeking to rely upon the affidavit a notice by letter requiring the maker of the affidavit to attend at the Tribunal for cross-examination.
- (5) Unless the Tribunal in a particular inquiry otherwise directs, the Tribunal shall not accept an affidavit as evidence for the purposes of that inquiry if a notice has been given in accordance with subregulation (4) and the maker of the affidavit does not attend at the Tribunal for cross-examination.

13. Evidence by telephone etc.

- (1) A preliminary hearing may be conducted by telephone or by any other means of communication which does not require the physical presence of the parties.

r. 14

- (2) At any inquiry the Tribunal may direct that any evidence may be given by telephone or by any other means of communication which does not require the physical presence of a person.
- (3) Where the Tribunal hears evidence or otherwise conducts proceedings in a manner authorised by this regulation, the Tribunal shall ensure that the evidence is heard or proceedings conducted in such a manner that all parties present or represented before the Tribunal, whether personally present or present by means of a telephone or other means of communication, are able to hear that evidence and participate in those proceedings.

14. Written submissions

At any inquiry the Tribunal may direct that any submissions on any question of fact or law shall be made in writing.

15. Response to request for information may be tendered as evidence

At any inquiry a party may tender as evidence all or some of the answers given in response to a Request for Information. The President may look at the whole of the answers if part only is sought to be tendered and if of the view that it is misleading to tender only part of the answers the President may reject the tender unless any further answers are tendered as directed.

16. Inspection of documents

In the exercise of its powers and functions under the Act, the *Royal Commissions Act 1968* and these regulations, the Tribunal may inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of any of them, or of any of their contents.

17. Form of Summons to a Witness

- (1) A Summons to a Witness shall be in the form set out in Form 3 in Schedule 1.
- (2) A Summons to a Witness to Produce Documents shall be in the form set out in Form 4 in Schedule 1.

18. Application to summons a witness

- (1) Any party to an inquiry may request the President of the Tribunal to issue a Summons to a Witness or a Summons to a Witness to Produce Documents.
- (2) The party who causes a Summons to Witness or a Summons to Witness to Produce Documents to be issued shall arrange for such Summons to be served personally upon the person named in the Summons.
- (3) A Summons to Witness or a Summons to Witness to Produce Documents shall be served not less than 3 days before the day appointed in the Summons for attendance.

19. Evidence on oath and requirement to answer questions

At any inquiry the Tribunal may —

- (a) require any person to make oath or affirmation that he or she will truly answer all questions put to him or her by the Tribunal and by any party to the inquiry relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by a member of the Tribunal); and
- (b) require any person appearing before the Tribunal, including any person whose conduct is subject to an inquiry, (whether he or she has been summoned to appear or not) to answer any relevant questions put to him or her by any member of the Tribunal or by any other person appearing before the Tribunal.

Part 6 — Applications for interim orders

20. Application for interim order

- (1) An application for an interim order shall be in the form set out in Form 5 of Schedule 1 and shall be lodged with the registrar.
- (2) Unless the President directs otherwise an application for an interim order shall be accompanied by an affidavit and shall include a precise statement of the order or orders sought.
- (3) In cases of urgency an application for an interim order may be made *ex parte*.
- (4) Where an application is made *ex parte*, the President may order that the hearing of the application be delayed until any other interested parties are informed of the application and served with copies of any documents which have been filed.
- (5) Where an order is made *ex parte*, the President may direct the registrar to serve in any manner which the President considers appropriate, a copy of the order on any person affected by the terms of the order and upon any other person.

Part 7 — Application for exemption or variation

21. Form of application for exemption

An application for an exemption under section 135(1) shall be in the form set out in Form 6 Schedule 1.

22. Form of application for variation or further exemption

An application for a further exemption under section 135(2) or for a variation of an exemption or further exemption shall be in the form set out in Form 7 in Schedule 1.

23. Affidavit in support of application

Unless the President directs otherwise in a particular case every application for an exemption of a further exemption or the variation of an exemption or further exemption shall be accompanied by an affidavit which contains particulars of the evidence in support of the application.

24. Commissioner a party to application

The Registrar shall cause a copy of every application for an exemption or a further exemption or the variation of an exemption or further exemption and every affidavit filed in support of such applications to be served upon the Commissioner who shall be a party to every such application unless the Commissioner lodges an affidavit with the registrar setting out the reasons why the Commissioner does not wish to be a party to the application.

25. Notice of Preliminary Hearing

- (1) Where an application for exemption or an application for further exemption or variation of an exemption or further exemption has been filed in accordance with these regulations, the registrar shall serve upon the person making the application and the Commissioner a Notice of Preliminary Hearing.

r. 26

- (2) The provisions of regulation 4, in so far as they are relevant, apply to the Notice of Preliminary Hearing.
- (3) Parts 4, 5 and 9 of these regulations, subject to necessary modifications, apply to an application for an exemption or for a further exemption or for a variation of an exemption or further exemption.

26. Tribunal may direct application to be served on other persons

At the preliminary hearing or at any other time, the Tribunal may direct the applicant to serve upon any person a copy of the application for exemption or further exemption or application for variation of an exemption or further exemption and any affidavit filed in support of that application.

27. Other person may apply to be joined as parties

At the preliminary hearing or at any other time, any person may apply to be joined as a party to an application under this Part. Unless the President directs otherwise in a particular case every person who seeks to be joined as a party to an application shall file an affidavit setting out that person's interest in the application.

Part 8 — Enforcement of orders

28. Enforcement of orders

- (1) When enforcement of any order made by the Tribunal is sought, the registrar shall upon request issue an order signed by the President.
- (2) An order shall be in such form as the President may determine.

Part 9 — General

29. Location of inquiry

- (1) Every inquiry conducted by the Tribunal shall be held in Perth except that on the application of any party the President may direct that an inquiry shall be held elsewhere.
- (2) An inquiry may, if it appears to the President to be in the best interests of the parties, be adjourned to such other place as may appear to the President to be necessary or expedient.

30. Practice directions

- (1) The President may issue practice directions relating to any matters of procedure not specifically provided for under the Act of these regulations.
- (2) Where any matter or thing is not specifically provided for under the Act or these regulations, or in practice directions, application may be made to the President for directions appropriate to the case.

31. Failure to comply with regulations or directions

If any party to an inquiry does not, without reasonable excuse, proof of which is on the party, comply with the terms of these regulations or any procedural direction given by the President, the Tribunal may on the application of any other party to the inquiry make any order which it considers proper including an order dismissing the complaint or striking out a defaulting party's Points of Defence, as the case may be.

32. Service of documents

- (1) Any document, letter or notice, required to be served pursuant to these regulations or a direction of the Tribunal and for which no specific provision for service has been made, may be served —
 - (a) by delivering it personally to the address for service given in the Notice of Address for Service of the person so required to be served; or

- (b) by prepaid post addressed to the address for service given in the Notice of Address for Service of the person so required to be served.
- (2) Where a document, letter or notice is served pursuant to subregulation (1) by post, service shall be presumed, unless the contrary is shown, to have been effected 3 clear days after posting.

32A. Legal representation

- (1) The Commissioner may, where it is considered appropriate, on application by a complainant who has received assistance under section 93(2) of the Act, arrange for the provision of legal representation to enable the complainant to make or defend an appeal to the Supreme Court under section 134(1) of the Act.
- (2) The provision of legal representation may be made subject to conditions.

[Regulation 32A inserted in Gazette 6 October 1989 p. 3727.]

r. 32B

Part 10 — Management plans

[*Heading inserted in Gazette 20 May 1988 p. 1669.*]

32B. Reporting date for certain authorities under section 146 of the Act

- (1) The chief executive officer of a public authority within the meaning of section 139(1)(d) of the Act, other than a public authority referred to in subregulation (2), shall report to the Director under section 146(1) of the Act no later than 8 August in each year.
- (2) The municipal clerk of the council of a municipality constituted under the *Local Government Act 1960*² shall report to the Director under section 146(1) of the Act no later than 8 December in each year.

[*Regulation 32B inserted in Gazette 8 November 1991 p. 5722.*]

33. Implementation of management plans

In accordance with section 145(4)(b) of the Act the body, the name of which is set out in column 1, shall implement a management plan on or before the date set out opposite that body in column 2 —

Column 1	Column 2
Curtin University	31 March 1989
Murdoch University	31 March 1989
University of Western Australia	31 March 1989
Western Australian College of Advanced Education	31 March 1989

[*Regulation 33 inserted in Gazette 20 May 1988 p. 1669.*]

[*34. Inserted in Gazette 9 November 1990 p. 5529; disallowed in Gazette 25 January 1991 p. 326.*]

Schedule 1

[Regulation 2]

FORM 1

EQUAL OPPORTUNITY COMMISSION
(Agent for the Human Rights Commission)
COMPLAINT/ENQUIRY FORM

Complete Parts A and B.

After speaking with a Conciliation Officer, complete Part C and return the whole form to the Equal Opportunity Commission.

PART A

Name:.....

Address:.....

.....Postcode.....

Telephone: (0) H (0).....W

I am complaining about:

Name of Person/Company/Organisation:

.....

Address:

Telephone: (0)H

Date of alleged discrimination:

Ground of alleged discrimination (Please tick)

- Race
- Sex
- Marital Status
- Political Conviction
- Religious Conviction
- Other (Please specify)

PART B

Set out the details of the alleged discrimination.

Enclose any documents, letters or notices that relate to your statement. Your statement may be written in any community language.

.....

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Schedule 1

Page 2

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Signature:
Date:

PART C

Before completing this part, speak with a Conciliation Officer. Persons outside the metropolitan area may reverse charges on this call.

It is important that you are aware of the different remedies for discrimination available under the laws which are now in force. You may be required to select the law under which you wish to proceed.

You are advised to contact a Conciliation Officer and have this explained before you complete this part.

Having discussed these matters with a Conciliation Officer, I wish to proceed under: (Please tick)

EQUAL OPPORTUNITY ACT (W.A.)

THE SEX DISCRIMINATION ACT (Federal)

THE RACIAL DISCRIMINATION ACT (Federal)

THE HUMAN RIGHTS COMMISSION ACT (Federal)

Signature:

Date:

Return this form to the

EQUAL OPPORTUNITY COMMISSION
1ST FLOOR
5 MILL STREET
PERTH WA 6000³

Schedule 1

FORM 2

Equal Opportunity Tribunal

NOTICE OF PRELIMINARY HEARING

Equal Opportunity Tribunal

No. of 20

In the matter of a complaint

by

against

Complainant

Respondent

Take notice that the Equal Opportunity Tribunal will proceed with the preliminary hearing of this matter at 5 Mill Street, Perth³, on the day of 20 , at o'clock in the noon.

FORM 3

Equal Opportunity Tribunal

SUMMONS TO WITNESS TO GIVE EVIDENCE

Equal Opportunity Tribunal

No. of 20

In the matter of a complaint

by

against

Complainant

Respondent

TO:

Take notice that you are required to attend before the Equal Opportunity Tribunal at 1st Floor, 5 Mill Street, Perth³, at o'clock in the noon on the day of 20 and so from day to day until the above complaint is heard to give evidence on behalf of the abovenamed

President.

FORM 4

Equal Opportunity Tribunal

SUMMONS TO PRODUCE DOCUMENTS AND TO GIVE EVIDENCE

Equal Opportunity Tribunal

No. _____ of 20 _____

In the matter of a complaint

by _____ Complainant
against _____ Respondent

TO:

Take notice that you are required to attend before the Equal Opportunity Tribunal at 1st Floor, 5 Mill Street, Perth³, at _____ o'clock in the _____ noon on the _____ day of _____ 20 _____ and so from day to day until the above complaint is heard to give evidence on behalf of the abovenamed _____, and to produce to the Tribunal the following books, papers and document in your possession, custody of control: —

President.

FORM 5

Equal Opportunity Tribunal

APPLICATION FOR INTERIM ORDER

Equal Opportunity Tribunal

No. _____ of 20 _____

In the matter of a complainant

by _____ Complainant
against _____ Respondent

I/We _____ of _____
apply pursuant to Regulation 20 of the *Equal Opportunity Regulations 1986* for the following order —

.....
Applicant.

Schedule 1

FORM 6

Equal Opportunity Tribunal
APPLICATION FOR EXEMPTION

Equal Opportunity Tribunal
No. of 20

In the matter of an application
by for exemption from the provision of the *Equal Opportunity
Act 1984*of.....
hereby apply for exemption from the following provision of the Equal
Opportunity Act —
The exemption is sought for the period of
.....
Applicant.

FORM 7

Equal Opportunity Tribunal
**APPLICATION FOR FURTHER EXEMPTION OR VARIATION OF
EXEMPTION**

Equal Opportunity Tribunal
No. of 20

In the matter of an application
by
for further exemption/variation of exemption from the provisions of the *Equal
Opportunity Act 1984*
.....of.....
hereby apply for further exemption/variation of exemption from the following
provision of the Equal Opportunity Act —
The exemption is sought for the period of.....
.....
Applicant.

Notes

- ¹ This reprint is a compilation as at 23 March 2001 of the *Equal Opportunity Regulations 1986* and includes the amendments referred to in the following Table.

Table of Regulations

Citation	Gazettal	Commencement	Miscellaneous
<i>Equal Opportunity Regulations 1986</i>	31 January 1986 pp. 349-54	31 January 1986	
<i>Equal Opportunity Amendment Regulations 1988</i>	20 May 1988 p. 1669	20 May 1988	
<i>Equal Opportunity Amendment Regulations 1989</i>	6 October 1989 p. 3727	6 October 1989	
<i>Equal Opportunity Amendment Regulations 1990</i>	9 November 1990 p. 5529 (Disallowed in <i>Gazette</i> 25 January 1991 p. 326)	9 November 1990	
<i>Equal Opportunity Amendment Regulations 1991</i>	8 November 1991 p. 5722	8 November 1991	

- ² See *Local Government Act 1995* (Schedule 9.3 Clause 3(2)).

- ³ Now 32 St. George's Terrace Perth WA 6000