



Western Australia

Industrial Relations Act 1979

# **Industrial Relations Commission Regulations 2005**

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# **Industrial Relations Commission Regulations 2005**

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**Defined Terms**



Western Australia

Industrial Relations Act 1979

## **Industrial Relations Commission Regulations 2005**

### **Part 1 — Preliminary**

**1. Citation**

These regulations are the *Industrial Relations Commission Regulations 2005*<sup>1</sup>.

**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;

***Form*** means a form in Schedule 1 and, if followed by a designation, means a form in that Schedule having that designation;

***proof of service*** means proof of service in accordance with regulation 28;

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***Registrar*** includes a Deputy Registrar;  
***writing*** includes an electronic document.

## **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 regulation 5, 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.

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- (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 of being informed under subregulation (8), the Registrar is to forward the application with a memorandum to that effect to —
  - (a) the President, if the application is made to the President or the Full Bench; or
  - (b) the Chief Commissioner.

*[Regulation 4 amended in Gazette 28 Apr 2006 p. 1651;  
12 Oct 2010 p. 5153.]*

**5. Lodging and filing documents electronically**

- (1) Subject to the requirements of the Commission's website and this regulation a party may lodge a Form electronically by completing the Form on the Commission's website at <http://www.wairc.wa.gov.au>.
- (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;
  - (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;
    - (ii) if applicable, the sender's document exchange number, fax number and email address; and
    - (iii) what the sender requests the Registrar do with the document.

- (3) A document sent by fax to the office of the Registrar must be sent to the published fax number which is approved by the Registrar and published on the Commission's website and must —
- (a) not be more than 20 pages long;
  - (b) have a cover page stating —
    - (i) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and
    - (ii) the number of pages (including the cover page) being sent by fax;
- and
- (c) be endorsed on the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and
    - (ii) the date and time the document was sent by fax.
- (4) A person that lodges a document by fax must —
- (a) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (b) if directed to do so by the Commission, produce the documents referred to in paragraph (a) to the Commission.
- (5) A document lodged by fax at the office of the Registrar is to be taken to have been lodged —
- (a) if the whole document is received before close of business on a day when the office of the Registrar is open for business, on that day; or
  - (b) otherwise, on the next day when the office of the Registrar is open for business.

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- (6) If a document is sent by fax or email to the office of the Registrar but not in accordance with this regulation —
  - (a) the document is to be taken not to have been lodged at the office of the Registrar; and
  - (b) the Registrar is to 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) or (3), the Registrar is to 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 is to —
  - (a) if the sender requests that the document be held for collection — make a paper copy of the document and hold it for collection for 7 days; and
  - (b) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days — return the document by sending it electronically to the email address of the lodging party.
- (10) A person who sends an electronic document to the office of the Registrar is to —
  - (a) keep a paper copy of the document; and
  - (b) if directed to do so by the Commission, produce it to the Commission.
- (11) The first page of a paper copy referred to in subregulation (10) is to be endorsed with —
  - (a) a statement that the paper copy is a true copy of the document; and

(b) the date that the document was sent.

*[Regulation 5 amended in Gazette 28 Apr 2006 p. 1651;  
12 Oct 2010 p. 5153.]*

**6. Office of the 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 member of the Commission 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) An electronic or other document sent to the office of the Registrar by fax transmission or email that is not received when the office of the Registrar is open to the public for the transaction of business is taken to have been received at the time when the office of the Registrar next 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 in Gazette 28 Apr 2006 p. 1651;  
12 Oct 2010 p. 5154.]*

**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,

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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 the Registrar in respect of applications**

- (1) On and after the filing of an application the Registrar is to take such action in respect of applications to the President and the Full Bench and in respect of all other applications to the Commission as the President and the Chief Commissioner respectively 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, or in respect of applications to the President and the Full Bench, the President 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.

**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”.

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- (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 member of the Commission.
- (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.

## **Part 3 — Conduct of proceedings**

### **Division 1 — Notice of application, answer and parties**

#### **13. Applications to the 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 form of Form 1 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;
  - (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 an answering statement 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 answers 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 answers has been determined by the Commission.
- (6) Subject to these regulations or the direction of the Commission otherwise, the time required for filing any answering statement

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 an answer 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 in Gazette 28 Apr 2006 p. 1651.]*

**14. Notice of answer and counter-proposal**

A notice of answer and counter-proposal must be in the form of Form 5 and must specify with particularity the answer and counter-proposal and the basis on which the answer and counter-proposal is made.

**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 form of Form 13 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.

**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 form of Form 14 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 answer to an application the application may only be withdrawn under subregulation (1) with the consent of the respondent making the counter-proposal in the form of Form 14.
- (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 in Gazette 28 Apr 2006 p. 1651.]*

**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;
  - (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 applicant 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 an answer to the application but the application cannot be listed for hearing until proof of service on the party to whom the application is directed has been filed.
- (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.

**18. Joinder of parties**

- (1) An application to join any person as a party to proceedings must be made in the form of Form 1 and have attached to it 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) After the application is filed the applicant must serve the application together with a copy of the application that commenced the proceedings to which it relates on the person.

**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;

- (b) must be given not less than 2 days 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.

### **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;

- (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 applicant must serve a copy of the application on the respondent.
- (5) It is not necessary for the respondent to file an answer to the application but the application cannot be listed for hearing until proof of service on the party to whom the application is directed has been filed.
- (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.

**21. Order for production to the 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, answer, 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 applicant must serve a copy of the application on the respondent.
- (5) It is not necessary to file an answer to the application but the application cannot be listed for hearing until proof of service on the other party has been filed.
- (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.

**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, give notice to any other party in the form of Form 16 filed with the Registrar requiring the party to admit any fact relative to the issue.
- (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, serve upon the party giving the notice a reply in writing admitting or denying the fact with or without qualification, as the case may be.
- (3) On receiving the reply referred to in subregulation (2), the party giving the notice shall forthwith file the reply in the office of the Registrar.
- (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.

### **Division 3 — Service**

#### **24. Service**

- (1) Subject to these regulations, the party by or on behalf of whom any notice or document is filed or issued in proceedings before the Commission must as soon as practicable after the notice or document is filed or issued, effect service on other parties entitled to be served unless the Commission otherwise directs in a particular case.
- (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;
  - (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;
  - (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
  - (d) in the case of any other person —
    - (i) by delivering it to the person personally;
    - (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.

**25. Electronic address for service**

- (1) For the purposes of enabling the service by fax of documents that the regulations require to be served, a person may, in addition to providing an address for service, provide a fax number operating at that address.
- (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 or a fax number is to be taken to have consented to being served with documents by fax at that fax number, or as an attachment to an email sent to that email address, as the case may be.
- (4) If a party's fax number or 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.

**26. Service electronically**

- (1) If these regulations require a person to serve a document, then, unless the contrary intention appears, the person may serve the document —
  - (a) if the party has provided a fax number under regulation 25(1), by sending the document by fax to that number; or
  - (b) if the party has provided an email address under regulation 25(2), by sending the document 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) Regulation 5(4) and (5), with any necessary changes, apply to a document being served by fax in the same way as they apply to a document being lodged by fax.
- (4) A document that is served by email or fax 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.

**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 Form 1 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 relevant Commission directs in a particular case.

**28. Proof of service**

- (1) Where service of any document is required under the Act or these regulations, proof of such service must be given by statutory declaration in the form of Form 4 filed —
  - (a) if the day of the hearing is within 7 days of the day on which service was effected — not later than the day of the hearing; or
  - (b) in any other case — within 7 days of the day on which service was effected.
- (2) The declaration must state with particularity the full name and the address of each person or party served, and the method by which service was effected.
- (3) When service of any document is effected by pre-paid post, unless the contrary is proven such service is taken to have been effected at the time at which the letter containing the document would be delivered in the ordinary course of post.
- (4) When service of any document is effected by fax, unless the contrary is proven such service is taken to have been effected at the time at which the fax would be received in the ordinary course of transmission.
- (5) When service of any document is effected by fax a transmission report is taken to be proof of the transmission of the document unless the contrary is proven.
- (6) When service of any document is effected by an email transmission, the email must also be copied to an address approved by the Registrar, or in any particular case approved by the Commission, for that purpose.
- (7) The email must clearly state all intended recipients of the email and the respective email addresses.

### **Division 4 — Conferences**

**29. Orders under sections 32 and 44**

A direction or an order made by the Commission under section 32(8) or 44(6)(ba) or (bb) of the Act when given or committed to writing is to be under Seal and is to be provided by the Registrar or by such other person as the Commission may direct, to such person or persons as the Commission may direct.

**30. Compulsory conference**

- (1) An application for a conference under section 44 of the Act must set out the reasons for which the conference is sought.
- (2) No answering statement 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 fax transmission or by email.

**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, answers, counter-proposals and replies in such manner and within such time as the Commission sees fit.

### **Division 5 — Conduct of hearings**

**32. Application for and notice of hearing**

- (1) Where all necessary procedure has been completed, any party to an application may apply in writing to the Registrar for a date and place to be fixed 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 form of Form 15 of the time and place fixed for hearing.
- (3) Despite subregulation (1), 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.

**33. Procedure before Commission**

- (1) Subject to subregulation (2), the procedure before the Commission, except before the President, on an appeal to be heard by the Full Bench or the Commission in Court Session, 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.

### **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;
  - (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.
- (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 applicant must serve a copy of the application on the respondent.
- (3) It is not necessary for the respondent to file an answer to the application but the application cannot be listed for hearing until proof of service of the application on the other parties to the substantive matter before the Commission has been filed.
- (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.

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- (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.

**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 form of Form 17.
- (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) Service of a summons is to be effected by serving it personally on the person named in the summons.

- (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.

**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) No answer need be filed to the application but the application cannot be listed for hearing until proof of service is filed.

**43. Witness statements**

- (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 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.
- (2) An application may be made orally or in writing to the Commission citing the distinguishing number of the proceedings to which it relates.

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- (3) If the application is made in writing, the applicant 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;
  - (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.

**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;



- (b) the nature of the evidence to be taken or submissions to be made;
  - (c) the expected duration of the evidence or submissions;
  - (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;
  - (e) in the case of submissions, the expected duration of the submissions;
  - (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 applicant 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.

**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 applicant 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;

- (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;
  - (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 in Gazette 28 Apr 2006 p. 1652.]*

**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,

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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 in Gazette 22 Jan 2008 p. 192.]*

## **Part 5 — Applications generally**

### **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) On filing the application the applicant must seek directions from the Commission through the office of the Registrar as to service of the application.
- (3) As soon as practicable after the Commission gives directions as to service, the Registrar is to inform the applicant of the directions and the applicant is then to lodge in the office of the Registrar for stamping as many copies of the application as there are persons directed to be served with the application.
- (4) On the return to the applicant of the stamped copies of the application for the award the applicant must serve a copy of the application together with its attachments on those persons directed by the Commission to be served with the application.
- (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 notice of answer and counter-proposal in the form of Form 5.
- (6) An answering statement must be attached to the notice of answer and counter-proposal and must specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.

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- (7) An answering statement 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) A respondent filing a notice and answering statement must file one copy for retention by the Commission and in addition at least as many copies as there are applicants.
- (9) On the return to a respondent of stamped copies of the notice and answering statement the respondent must serve a copy on the applicant.
- (10) The provisions of this regulation with respect to the time within which notice and answering statements 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 an answering statement 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.

**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 application must be served on all the named parties to the award unless at the time of filing the application the applicant requests the Commission for directions as to service of the application, in which case the Registrar is not to return to the applicant copies of the application until the Commission has given directions as to service of the application.

- (5) As soon as practicable after the Commission gives directions as to service, the Registrar is to inform the applicant of the directions and the applicant must then lodge in the office of the Registrar for stamping as many copies of the application as there are persons directed to be served with the application.
- (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 notice of answer and counter-proposal in the form of Form 5.
- (7) An answering statement must be attached to the notice of answer and counter-proposal and must specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (8) An answering statement 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) A respondent filing a notice and answering statement must file one copy for retention by the Commission and in addition at least as many copies as there are applicants.
- (10) On the return to a respondent of stamped copies of the notice and answering statement the respondent must serve a copy on the applicant.
- (11) The provisions of this regulation with respect to the time within which answering statements 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 an answering statement 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.

**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) On filing the application the applicant must seek directions from the Commission through the office of the Registrar 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.

**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;
  - (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 an answer to the application but the application cannot be listed for hearing until proof of service of the application on each of the parties required to be served has been filed.

*[Regulation 52 amended in Gazette 28 Apr 2006 p. 1652.]*

**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 answering statement 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 in Gazette 12 Oct 2010 p. 5154.]*

**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.

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- (2) It is not necessary to serve the application or to file an answer to the application.

*[Regulation 54A inserted in Gazette 12 Oct 2010 p. 5154-5.]*

**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) the original of the agreement 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 an answer 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 in Gazette 12 Oct 2010 p. 5155.]*

**56. Retirement from industrial agreement**

The notice signifying intention to retire from an industrial agreement must —

- (a) be in the form of Form 6;
- (b) be filed in the office of the Registrar; and
- (c) as soon as practicable after the notice is filed, be served by the party retiring on each other party to the agreement.

**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 Form 1 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.

**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 Form 1.
- (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;
  - (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 President's Associate to be endorsed with directions given by the President as to service, a date of hearing, or any directions hearing.
- (4) The matter is then to proceed in accordance with those directions.

**60. Proceedings before the Full Bench for enforcement of the Act**

- (1) An application for enforcement under section 84A of the Act must be in the form of a notice of application in Form 12.
- (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 President 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.

## **Part 6 — Individual employee applications**

### **Division 1 — General**

#### **61. Applications by individual employees**

- (1) Any claim by an employee of harsh, oppressive or unfair dismissal referred to the Commission under section 29(1)(b)(i) of the Act must be in the form of a notice of application in Form 2 and must have attached to it such particulars as are approved by the Chief Commissioner from time to time.
- (2) Any claim by an employee that he or she has not been allowed by his or her employer a benefit, not being a benefit under an award or order, to which he or she is entitled under his or her contract of employment referred to the Commission under section 29(1)(b)(ii) of the Act must be in the form of a notice of application in Form 3 and must have attached to the notice of application such particulars as are approved by the Chief Commissioner from time to time.
- (3) The applicant must, upon the return to him or her of the stamped copies of the application, serve a copy of the application together with its attachments on each respondent.
- (4) A respondent who is served with an application made under section 29(1)(b) of the Act and who desires to contest the claim may file a notice of answer and counter-proposal in the form of Form 5 within 21 days of being served with the application.
- (5) An answering statement must be attached to the notice of answer and counter-proposal and must, in summary form, specify the facts on which the respondent relies and admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (6) The respondent is to serve a copy of the notice and answering statement on the applicant.



- (7) At any hearing by the Commission of an application, a party who was served with a copy of the application and who did not file a notice and answering statement within the time allowed under these regulations may be heard on the matters raised in the application and not on any other matters.

**62. Application under section 29(1)(b)(i) — out of time**

- (1) If a claim by an employee of harsh, oppressive or unfair dismissal is referred to the Commission outside the time prescribed in section 29(2) of the Act, the claim 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.
- (2) The referral is otherwise to be dealt with in accordance with regulation 61.

**Division 2 — Agents**

**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 form of Form 18 and that form is filed.
- (2) An applicant under section 29(1)(b) of the Act may appoint a person as agent by completing the relevant part of the particulars attached to the notice of application.
- (3) A copy of the appointment in the form of Form 18 must be served on the other parties to the proceedings.
- (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.

### **Division 3 — Delegation to Registrars**

#### **64. Delegation to Registrars**

- (1) A claim under section 29(1)(b) 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 or a Deputy Registrar; and
  - (b) for the Registrar or a Deputy 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.

#### **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) Any application to register an organisation must be made in triplicate to the Full Bench in the form of Form 19.
- (2) The application must be lodged in the office of the Registrar with the following attachments —
  - (a) 3 copies of a list containing the full names of the officers of the organisation with their respective addresses;
  - (b) 3 printed or type-written copies of the rules of the organisation, certified as being correct by the president or secretary of the organisation;
  - (c) 3 copies of the notice given to members in accordance with section 55(4)(b) of the Act, including a statement as to how such notice was disseminated to members;
  - (d) 3 copies of the resolution of the organisation authorising the application.
- (3) Any person who objects to the registration of the organisation must give notice of that objection in the form of Form 13 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.

### **67. Registration of council as industrial association**

- (1) Any application to register a council or other body as an association must be made in triplicate to the Full Bench in the form of Form 19.
- (2) The application must be lodged in the office of the Registrar with the following attachments —
  - (a) 3 copies of a list containing the full names of the organisations that are represented on the council;

- (b) 3 copies of a list containing the full name and address of each person representing those organisations on the council;
  - (c) 3 copies of a list containing the full names of the officers of the council with their addresses;
  - (d) 3 printed or type-written copies of the rules of the council, certified as being correct by the president or chairman and secretary of the council;
  - (e) 3 copies of the notice given to members of the council in accordance with section 55(4)(b) of the Act as applied by section 67(3) of the Act, including a statement as to how such notice was disseminated to members;
  - (f) 3 copies of the resolution authorising the application.
- (3) Any person who objects to the registration of the council or other body as an association must give notice of that objection in the form of Form 13 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.

**68. Amalgamation of organisations**

- (1) Any application to register as an organisation a proposed new organisation to be formed by the amalgamation of 2 or more organisations must be made in triplicate to the Full Bench in the form of Form 19.
- (2) The application must be made under the seals of the amalgamating organisations and must be signed by the secretary and principal executive officer of each of the amalgamating organisations.
- (3) The application must be lodged in the office of the Registrar with the following attachments —
  - (a) 3 copies of a list containing the full names of the officers of the proposed new organisation with their respective addresses;

- (b) 3 printed or type-written copies of the rules of the proposed new organisation certified as being correct by the president or secretary of the new organisation;
  - (c) 3 copies of the notice given to the members of each amalgamating organisation in accordance with section 55(4)(b) of the Act as applied by section 72(3) of the Act, including a statement as to how such notice was disseminated to members;
  - (d) 3 copies of the resolution of such amalgamating organisation authorising the application.
- (4) Any person who objects to the registration of the organisation must give notice of that objection in the form of Form 13 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.

**69. Alteration of rules**

- (1) An application to alter the rules of an 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 in triplicate to the Full Bench in the form of Form 20.
- (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 form of Form 20.
- (3) An application under subregulation (1) must be lodged in the office of the Registrar with the following attachments —
  - (a) 3 printed or type-written copies 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) 3 printed or type-written copies of each alteration;
  - (c) 3 copies of the notice given to members in accordance with section 62(3)(b) of the Act including a statement as to how such notice was disseminated to members;
  - (d) 3 copies of the resolution authorising the application.
- (4) An application under subregulation (2) must be lodged in the office of the Registrar together with one printed or type-written copy of the attachments specified in subregulation (3).
- (5) Any person who objects to the alteration of a rule referred to in subregulation (1) must give notice of that objection in the form of Form 13 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.

**70. Substitution of new set of rules**

- (1) Any 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 in triplicate to the Full Bench in the form of Form 20.
- (2) Any 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 form of Form 20.
- (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 if the

application is made to the Full Bench it must be accompanied by 3 printed or type-written copies and if made to the Registrar it must be accompanied by one printed or type-written copy of the new rules certified as being correct by the president or secretary of the organisation or association.

**71. Change of name**

- (1) Any application to change the name of an organisation or association must be made in triplicate to the Full Bench in the form of Form 20.
- (2) The application must be lodged in the office of the Registrar with the following attachments —
  - (a) 3 copies of the notice given to members informing them —
    - (i) of the proposal for the change of name and the reasons for the change of name;
    - (ii) of 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 and affording members a reasonable opportunity to object, including a statement as to how such notice was disseminated to members;
  - (b) 3 copies of the proposed new name;
  - (c) 3 copies of the resolution authorising the application.
- (3) Any person who objects to the change of name of the organisation must give notice of that objection in the form of Form 13 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.



**72. Counterpart certificates**

Any application to the Full Bench for a declaration in accordance with section 71(2) of the Act must be accompanied by 3 copies of —

- (a) the rules of the organisation and of its Counterpart Federal Body;
- (b) a statement comparing the rules relating to the qualifications of persons for membership of the organisation and of its Counterpart Federal Body;
- (c) a statement comparing the offices that exist within the organisation, and the offices that exist within the branch of the Counterpart Federal Body;
- (d) a statement indicating the number of persons currently members of the organisation and the number of persons currently members of the branch of the Counterpart Federal Body; and
- (e) a statement indicating the number and categories of persons affected by section 71(3)(a) and (b) of the Act.

**73. Order under section 72A**

- (1) Any application to the Full Bench for a declaration in accordance with section 72A of the Act must be in writing, must set out in detail the grounds of such application, and must be in the form of a notice of application in Form 1.
- (2) A person who wishes to be heard in relation to the application must file a notice of application to be heard in triplicate and in the form of a notice of application in Form 1, and, at least 7 days before the date fixed for hearing of the application, must serve a copy of the notice on the applicant.
- (3) The notice must set out the grounds on which the person claims sufficient interest to be heard in relation to such application.

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**74. Summons for cancellation of registration of organisation**

- (1) Any request for a direction 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 form of Form 21.
- (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 is to cause the summons to be served on the organisation the registration of which is sought to be cancelled or suspended not less than 14 days before the return date.
- (5) Unless the Full Bench otherwise directs in a particular case the Registrar is to appear personally or be represented before the Full Bench on the return of the summons.
- (6) After hearing the organisation and any evidence it wishes to offer, the Full Bench may make such order in accordance with section 73 of the Act as it thinks fit.

**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 form of Form 22.
- (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.

**76. Application by Registrar for cancellation of registration**

- (1) Where an application is made by the Registrar under section 73(12) of the Act to cancel the registration of an

organisation or association it is to be made in triplicate to the Full Bench in the form of Form 23.

- (2) The application is to state clearly the grounds on which it is made and the application is to be accompanied by a statutory declaration setting out the facts on which the Registrar relies.
- (3) The application is to be served on the organisation or association the registration of which is sought to be cancelled.
- (4) Where the respondent organisation or association intends to oppose the application, it must give notice of that objection in an 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) Where 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 is to ascertain from the President a date for hearing the application and, as soon as practicable after setting a hearing date, is to notify the organisation or association of the hearing.

**77. Certificates of registration**

- (1) Where the Registrar is authorised by the Full Bench to register an organisation the Registrar is to give to the organisation a certificate in the form of Form 24.
- (2) Where the Registrar is authorised by the Full Bench to register a council or other body as an association the Registrar is to give to the association a certificate in the form of Form 25.
- (3) Where the Registrar is authorised by the Full Bench to register an organisation formed by the amalgamation of 2 or more organisations the Registrar is to give to the organisation a certificate in the form of Form 26.

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- (4) When the Registrar registers an alteration of the rules of an organisation or association the Registrar is to give to the organisation a certificate in the form of Form 27.
- (5) When the Registrar registers a change of name of an organisation or association the Registrar is to give to the organisation or association a certificate in the form of Form 28.

**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 form of Form 29.
- (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 form of Form 30.
- (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”;
  - (b) the name of the person nominated;
  - (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.”;
  - (d) a photograph of the person to whom the authority is issued;
  - (e) the signature of, and date of issue by, the Registrar;
  - (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 Form 1 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) Any application to the Registrar under section 49J(6) of the Act for the Registrar to revoke an authority must be filed in the office of the Registrar in an approved form.
- (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 Form 1.
- (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.

## **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 an 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 form of Form 1.

### **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 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 form of Form 31.

*[Regulation 90 inserted in Gazette 22 Dec 2009 p. 5271.]*

### **91A. Service of notice of appeal against removal action**

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

*[Regulation 91A inserted in Gazette 22 Dec 2009 p. 5271.]*

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**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 of the service of the notice of appeal —
  - (a) by completing and filing in the office of the Registrar 3 copies of —
    - (i) an answer stating the Commissioner of Police's reasons for deciding to take removal action;
    - (ii) a list of all documents, as defined in regulation 20(1), that the Commissioner of Police considered before making the decision;
    - (iii) 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
    - (iv) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant's case;
  - (b) by serving a stamped copy of those documents on the appellant.
  - [(c) deleted]*
- (2) The answer, the list of documents, the summary of facts and the reply must be in an approved form.

*[Regulation 91 amended in Gazette 22 Dec 2009 p. 5271.]*

**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, both the Commissioner of Police and the appellant must —
  - (a) file in the office of the Registrar 3 copies of every document relied upon by that party in its case; and

- (b) serve a stamped 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, both parties are taken to have satisfied the requirements of subregulation (1) in relation to that document.

**93. Notice of reformulated reasons under the *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 —
  - (a) by completing and filing in the office of the Registrar 3 copies of —
    - (i) a statement of the Commissioner of Police's reformulated reasons;
    - (ii) 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
    - (iii) a reply containing any matters the Commissioner of Police wishes to raise in relation to the appellant's case;
  - (b) by serving a stamped copy of those documents on the appellant.
  - [(c) deleted]*
- (2) The statement, the summary of facts and the reply must be in an approved form.
- (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 in Gazette 22 Dec 2009 p. 5271.]*

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**94. Withdrawal or discontinuance of an appeal against removal**

- (1) An appellant may withdraw or wholly discontinue an appeal against removal, or withdraw any part of the appeal —
  - (a) by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance;
  - (b) by serving a stamped copy of the notice on the Commissioner of Police.

*[(c) deleted]*

- (2) The notice of withdrawal or discontinuance must be in an approved form.

*[Regulation 94 amended in Gazette 22 Dec 2009 p. 5272.]*

## **Part 10 — Occupational Safety and Health Tribunal**

### **95. Referral of a matter and term used: Tribunal**

- (1) In this Part —  
*Tribunal* has the meaning given to that term in the  
*Occupational Safety and Health Act 1984* section 51G(2).
- (2) In this Part a reference to the referral of a matter includes a  
reference to the following —
  - (a) the referral of a claim under —
    - (i) the *Mines Safety and Inspection Act 1994*  
section 68C; or
    - (ii) the *Occupational Safety and Health Act 1984*  
section 35C;
  - (b) an appeal under the *Mines Safety and Inspection  
Act 1994* section 52 or 86;
  - (c) an application under the *Petroleum (Submerged Lands)  
Act 1982* Schedule 5 clause 31;
  - (d) an application under the *Petroleum Pipelines Act 1969*  
Schedule 1 clause 30;
  - (e) an application under the *Petroleum and Geothermal  
Energy Resources Act 1967* Schedule 1 clause 30.

*[Regulation 95 amended in Gazette 27 Mar 2007 p. 1406;  
6 May 2008 p. 1757; 29 July 2008 p. 3420.]*

### **96. Referrals to the Tribunal**

- (1) The referral of a matter to the Tribunal for determination is to be  
by way of Notice of referral in the form of Form 7.
- (2) Subregulation (1) does not apply to —
  - (a) a reference under the *Mines Safety and Inspection  
Act 1994* section 31BA(1).
  - [(b) deleted]*

*[Regulation 96 amended in Gazette 9 Jul 2010 p. 3240.]*

**97. 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 matters to, or the hearing or determination of 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)	r. 102
Part 3 except r. 13(3)(a) and 28	r. 103

- (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 in Gazette 16 Mar 2012 p. 1252.]*

**98. Procedures specific to Tribunal proceedings**

- (1) A Notice of referral is to 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 is to present a Notice of referral to the Chief Commissioner for allocation of the matter as soon as practicable after the Notice is filed.
- (3) After allocation of a matter the Tribunal is to give directions, by way of endorsement on the reverse of, or by attachment to, the Notice of referral, as to service of copies of the Notice.
- (4) Proof of service of a Notice of referral is to be given by statutory declaration in the form of Form 4 filed in the office of



the Registrar within 2 days of the day on which service was effected.

- (5) Where service of any other document is required by the Tribunal proof of such service is to be given by statutory declaration in the form of Form 4 filed in the office of the Registrar within 7 days of the day on which service was effected.
- (6) A direction, order or declaration of the Tribunal under the *Occupational Safety and Health Act 1984* section 51J(3) when committed to writing and sealed is to be served by the Registrar or such other person as the Tribunal may direct, on such person or persons as the Tribunal may direct.

**99. Forms modified**

For the purposes of this Part —

- (a) Forms 4, 14, 15, 16, 17 and 18 apply as if after “In the Western Australian Industrial Relations Commission” were inserted —  
“ sitting as the Occupational Safety and Health Tribunal ”;  
and
- (b) Forms 9, 15, 16 and 17 apply as if the references in those Forms to “the Commission” (except those relating to the stamp of the Commission) were references to the Tribunal.

## **Part 10A — Road Freight Transport Industry Tribunal**

*[Heading inserted in 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 in Gazette 10 Jun 2008 p. 2492.]*

### **99B. Referrals to the Tribunal**

The referral of a dispute or matter to the Tribunal under the *Owner-Drivers (Contracts and Disputes) Act 2007* is to be by way of notice of referral in Form 7A.

*[Regulation 99B inserted in Gazette 10 Jun 2008 p. 2492.]*

### **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)	r. 102
Part 3 except r. 13(3)(a) and 28	r. 103

- (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 in Gazette 16 Mar 2012 p. 1252-3.]*

**99D. Procedures specific to Tribunal proceedings**

- (1) A notice of referral is to 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 is to present a notice of referral to the Chief Commissioner for allocation of the matter as soon as practicable after the notice is filed.
- (3) The Registrar is to endorse on the notice of referral the time for lodging an answering statement under regulation 14.
- (4) Unless an ex parte application for a shortened time period within which an answering statement is to be filed and such application granted, the Respondent is to file any answering statement within 21 days of the date of service of the notice of referral.
- (5) Proof of service of a notice of referral is to be given by statutory declaration in Form 4 filed in the office of the Registrar within 2 days of the day on which service was effected.
- (6) A notice of answer and counter-proposal is to be in Form 5 and is to specify with particularity the answer and counter-proposal made and the basis on which the answer and counter-proposal is made.
- (7) Where service of any other document is required by the Tribunal proof of such service is to be given by statutory declaration in Form 4 filed in the office of the Registrar within 7 days of the day on which service was effected.
- (8) The Tribunal may orally, in writing, by telephone or fax transmission or email issue a summons to attend conciliation

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proceedings under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 45.

- (9) If proof of service of a copy of the notice of Referral has been filed by the applicant or a copy of the notice of Referral has been sent by fax transmission or by email to the Respondent by an officer of the Commission at the direction of the Tribunal, the Tribunal may, prior to the lodgment of the notice of answer and counter-proposal, convene a conference under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 44(2)(b).
- (10) A direction, order or declaration of the Tribunal under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 44(3) when committed to writing and sealed is to be served by the Registrar or such other person as the Tribunal may direct, on such person or persons as the Tribunal may direct.

*[Regulation 99D inserted in Gazette 10 Jun 2008 p. 2492-3.]*

**99E. Forms modified**

For the purposes of this Part —

- (a) Forms 4, 5, 14, 15, 16, 17 and 18 apply as if after “In the Western Australian Industrial Relations Commission” were inserted —

“

sitting as the Road Freight Transport Industry Tribunal

”; and

- (b) Forms 9, 15, 16 and 17 apply as if the references in those Forms to “the Commission” (except those relating to the stamp of the Commission) were references to the Tribunal.

*[Regulation 99E inserted in Gazette 10 Jun 2008 p. 2493-4.]*

## **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 form of Form 1.
- (2) The appellant must serve a copy of the appeal on each other party to the EEA the subject of the appeal.

#### **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 form of Form 9A.
- (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, together with proof of service under paragraph (a).
- (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 in Gazette 16 Jun 2009 p. 2189-90.]*

### **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 form of Form 9.
- (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) On the return to the appellant of the stamped copies of the notice of appeal the appellant 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 President may, subject to such conditions as the President 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 Form 1; 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 President is to endorse the same with the date of hearing and any necessary directions.
- (9) On the return to the applicant of the stamped copies of the application the applicant must serve it 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).
- (11A) Unless in a particular case the President 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 answer 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 answer 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) deleted]*

- (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 Magistrate.

*[Regulation 102 amended in Gazette 22 Jan 2008 p. 193;  
10 Jul 2009 p. 2740.]*

**103. Procedure for listing matters before the 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, on proof of service of 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 President to the President.
- (3) The Registrar may be satisfied, and may certify, that regulation 102(11A)(g) and (h) have been complied with, if the



appellant expressly states, in writing, that there has been full compliance with regulation 102(11A)(g) and (h).

- (4) At the same time as such file is transmitted to the President, the Registrar is to advise the President in writing as to the estimated length of hearing and dates when counsel, solicitors, agents, or the parties in person are available.
- (5) Despite subregulation (2), the Registrar may forward the file and documents to the President 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) Before the President lists the matter for hearing the President is to request the Chief Commissioner to allocate 2 members to the Full Bench for such hearing.
- (7) On a request under subregulation (6), the Chief Commissioner is to allocate 2 members to the Full Bench and the President is to list the appeal for hearing.
- (8) The President is to cause the parties to be notified of the date of hearing in the form of Form 15.
- (9) After any such appeal is listed for hearing, a party may upon an application to the Full Bench in the form of Form 1 and these regulations apply to expedite the hearing of the appeal.

*[Regulation 103 amended in Gazette 28 Apr 2006 p. 1652;  
10 Jul 2009 p. 2741.]*

**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 —
  - (a) by lodging a notice of application in Form 1; and

- (b) by serving a stamped 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; and
  - (c) by having a declaration of service completed, and filing the declaration.
- (3) The declaration of service must be in an approved form.
- (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 in Gazette 22 Jan 2008 p. 193-4.]*

**104. Review of decisions of the Western Australian Coal Industry Tribunal**

- (1) Any application to the Full Bench for a review of any decision or settlement given or effected by the Coal Industry Tribunal of Western Australia must be in the form of a notice of application in Form 1.
- (2) Three copies of the application must be filed in the office of the Registrar and each copy must have attached to it a statement that clearly and concisely sets out the grounds relied on in support of the application and what alternative determination the applicant 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) Where the statement of grounds of the application for review do not in the opinion of the Registrar comply with this regulation,

the Registrar is, before returning the stamped copies of the application, to refer the question to the President for direction.

- (5) As soon as practicable after being filed the application together with the attachments must be served on each other party to the proceedings before the Tribunal and on the Secretary to the Tribunal.
- (6) Within 7 days of filing an application for review the applicant must lodge 3 copies of an appeal book prepared and bound in an approved form and unless in any particular case the Commission directs otherwise, each book must contain —
  - (a) a copy of the application or reference instituting proceedings before the Tribunal;
  - (b) where applicable, a copy of that part or those parts of the transcript containing the matters relevant to the review that were before the Tribunal;
  - (c) a copy of the decision or settlement that is the subject of the application and the Tribunal's reasons for the decision or settlement; and
  - (d) a copy of all relevant exhibits tendered during those proceedings.
- (7) The Registrar is not to accept an appeal book unless all documents contained in the appeal book are clearly legible and unless it otherwise complies with the Act and these regulations.
- (8) After lodging the appeal books the applicant must serve a copy on each other party to the proceedings before the Tribunal.
- (9) On proof of service of the notice of appeal on the parties required in subregulation (5) the Registrar is to transmit the application to the President to be listed for hearing.
- (10) On determination of the application to review the Registrar is to notify the Secretary to the Tribunal of the Commission's decision.

## **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 appeals**

- (1) An application in respect of a claim under section 80E(2)(a) and (b) of the Act may be commenced by filing a notice of appeal in the form of Form 10.
- (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) 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) On the return to the appellant of the stamped copy of the notice of appeal the appellant must serve or cause it to be served on the appellant's employer.
- (5) On proof of service of the notice of appeal on the employer the appellant may apply to the Registrar for a date of hearing.
- (6) An appellant must lodge in the office of the Registrar a written resume 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.

**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 form of Form 11.
- (2) An appeal may be commenced within 21 days after the date of the decision, determination or recommendation in respect of which the appeal is made or where that decision, determination or recommendation is published in the *Government Gazette* within one month of the date of that publication.
- (3) A notice of appeal must clearly and concisely set out the grounds of appeal and 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 at least 3 copies of the notice for use of the Board and at least as many additional copies as there are respondents to the appeal.
- (5) On return to the appellant of the stamped copy of the notice of appeal the appellant must serve it on the respondent.
- (6) On proof of service of the notice of appeal on the respondent 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 and also serves a copy of the same statement on the other party to the appeal or the party's representative.

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**108. Nomination of agent for appeal of claim under section 80E(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 80E(2)(a) and (b) of the Act.

## **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 form of Form 10.
- (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) On the return to the appellant of the stamped copy of the notice of appeal the appellant must serve or cause it to be served on the Public Transport Authority.
- (5) On proof of service of notice of appeal the appellant may apply to the office of the Registrar for a date of hearing.

**r. 112**

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- (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.

**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) Any appeal from a decision of a Board of Reference must be in the form of Form 8 and as soon as practicable after being filed, must be served by the appellant 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.

**r. 119**

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

**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.

- (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 in accordance with the *Public Service Miscellaneous Allowances Award* and the *Public Service Motor Vehicle Allowance Award* respectively.
- (7) The provisions of this regulation do not apply to a member of a constituent authority who is a Commissioner.

**r. 120**

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(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 in Gazette 31 Oct 2008 p. 4767-8.]*

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

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## Schedule 1 — Forms

### Form 1 — Notice of application (general)

[r. 13, 27(3), 58, 59(1), 73(1) and (2), 82(8), 102(7), 103(9) and 104(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

#### Notice of application

To: .....

.....  
(name, address and telephone number of respondent/s — attach schedule if necessary)

TAKE NOTICE THAT .....

.....  
(name, address and telephone number of applicant/s — attach schedule if necessary)

has this day applied to the .....

Commission / Public Service Arbitrator / Public Service  
Appeal Board / Railways Classification Board

For: .....

(examples: an order / a conference / registration of a new agreement / issuance of a new award)

The grounds on which the application is made are:

.....

.....

(give details or attach schedule if necessary)

.....

.....

(signature of applicant/s)

NOTE: It is important to correctly state the full name of the employer. If the employer in this matter is a trading, financial or foreign corporation the Commission may not have jurisdiction to deal with the matter. If known, please indicate whether the employer is one of the following:

- ☐ Company      ☐ Incorporated association      ☐ Trust  
☐ Unincorporated (e.g. sole trader, partnership or other)  
☐ State government agency      ☐ Other .....

This notice must be completed by the applicant, signed and, where necessary, sealed, and a written statement of claim or other adequate description of the subject matter of the application must be attached. For endorsements, see the back of this Form.

**Where a fee is payable with an application it must be paid at the time of lodgment of the application, or within 7 days of the lodgment, or the application will not be processed.**

(Stamp of Commission)

*[Form 1 amended in Gazette 10 Jul 2009 p. 2741.]*

**Form 2 — Notice of application (s. 29(1)(b)(i))**

[r. 61(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of application**

To: .....  
.....  
(name, address and telephone number of employer — attach schedule if necessary)

NOTE: It is important to correctly state the full name of the employer. If the employer in this matter is a trading, financial or foreign corporation the Commission may not have jurisdiction to deal with the matter. If known, please indicate whether the employer is one of the following:

- ☐ Company      ☐ Incorporated association      ☐ Trust  
☐ Unincorporated (e.g. sole trader, partnership or other)  
☐ State government agency      ☐ Other .....

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of applicant — attach schedule if necessary)

has this day applied to the Commission for an order of reinstatement or compensation in respect of a harsh, oppressive or unfair dismissal for the reasons set out in the attached statement.

.....  
.....

.....  
(signature of applicant)

This notice must be completed by the applicant, signed and, where necessary, sealed, and a written statement of claim or other adequate description of the subject matter of the application must be attached. For endorsements, see the back of this Form.

**Where a fee is payable with an application it must be paid at the time of lodgment of the application, or within 7 days of the lodgment, or the application will not be processed.**

(Stamp of Commission)

*[Form 2 amended in Gazette 10 Jul 2009 p. 2741.]*

**Form 3 — Notice of application (s. 29(1)(b)(ii))**

[r. 61(2)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of application**

To: .....  
.....  
(name, address and telephone number of employer — attach schedule if necessary)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of applicant — attach schedule if necessary)

has this day applied to the Commission for an order in respect of his or her claim that he or she has not been allowed by you a benefit, not being a benefit under an award or order, to which he or she is entitled under his or her contract of employment for the reasons set out in the attached statement.

.....  
.....

.....  
.....  
(signature of applicant/s)

This notice must be completed by the applicant, signed and, where necessary, sealed, and a written statement of claim or other adequate description of the subject matter of the application must be attached.

For endorsements, see the back of this Form.

**Where a fee is payable with an application it must be paid at the time of lodgment of the application, or within 7 days of the lodgment, or the application will not be processed.**

(Stamp of Commission)

*[Form 3 amended in Gazette 28 Apr 2006 p. 1652; 10 Jul 2009 p. 2742.]*



**Form 4 — Statutory declaration of service**

[r. 28(1), 98(4) and (5), 99]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

IN THE MATTER OF  
a claim concerning.....  
(state nature of proceedings)**Statutory declaration of service**I, .....  
(full name in block letters)in the State of Western Australia .....  
(occupation)sincerely declare that on the .....  
(date)I did serve .....  
(description of document served)upon .....  
(name of person or party served)by .....  
(state method of service)at .....  
(city, town or suburb where service occurred, or in case of service by post, address of person or party served)

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.Declared at ..... in the State of Western Australia,  
(city, town or suburb where declaration made)

this ..... day of ..... 20 .....

before me .....  
(signature of authorised witness) (signature of person making the declaration).....  
(authority of witness)

(Stamp of Commission)

*[Form 4 amended in Gazette 28 Apr 2006 p. 1652-3; 22 Jan 2008 p. 194.]*

**Form 5 — Notice of answer and counter-proposal**

[r. 14, 48(5), 50(6) and 61(4)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of answer and counter-proposal**

To: .....  
.....  
(name, address and telephone number of applicant/s — attach schedule if necessary)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of respondent/s — attach schedule if necessary)

has this day filed a statement in answer to the claims made by you in the above number matter.

The particulars to the answer and counter-proposal are:

.....  
.....

.....  
.....  
(signature of respondent/s)

NOTE: It is important to correctly state the full name of the employer. If the employer in this matter is a trading, financial or foreign corporation the Commission may not have jurisdiction to deal with the matter. If known, please indicate whether the employer is one of the following:

- ☐ Company      ☐ Incorporated association      ☐ Trust  
☐ Unincorporated (e.g. sole trader, partnership or other)  
☐ State government agency      ☐ Other .....

This notice must be completed by the respondent/s, signed and, where necessary, sealed and a written statement admitting or disputing each claim made by the applicant/s must be attached.

(Stamp of Commission)

*[Form 5 amended in Gazette 10 Jul 2009 p. 2742.]*

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**Form 6 — Notice of retirement from agreement**

[r. 56(a)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of retirement from agreement**

To: .....  
.....  
(name, address and telephone number of party/parties to whom notice is directed)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of party giving notice)

being a party to registered industrial agreement number ..... of  
20 ..... has this day given notice of intention to retire from and cease to be  
a party to the said agreement at the expiration of 30 days from the date of this notice.

.....  
(signature of party giving notice)

This notice signifying intention to retire from an industrial agreement must be  
completed by the person giving such notice, signed and where necessary sealed by him  
or her, filed in the office of the Registrar and, as soon as practicable after the notice is  
filed, be served by the party retiring, on each other party to the agreement.

(Stamp of Commission)

*[Form 6 amended in Gazette 10 Jul 2009 p. 2742.]*

**Form 7 — Notice of referral to the Occupational Safety and Health Tribunal**

[r. 96(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission sitting as the  
Occupational Safety and Health Tribunal

No. OSH T..... of 20.....

**Notice of referral to the Occupational Safety and Health Tribunal**

TAKE NOTICE THAT .....

.....  
(name, address and telephone number of applicant — attach schedule if necessary)

has this day referred to the Tribunal:

.....  
.....  
(state nature of matter e.g. review, appeal, claim)

The grounds on which the referral is made are —

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
(give details — attach schedule if necessary)

.....  
(signature/seal of applicant or  
signature of applicant's solicitor or agent)

(Stamp of Commission)

For endorsements see the back of this form or the attachment(s).

*[Form 7 amended in Gazette 10 Jul 2009 p. 2742.]*

**Form 7A — Notice of referral to the Road Freight Transport Industry Tribunal**

[r. 99B]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission sitting as the  
Road Freight Transport Industry Tribunal

No. RFT ..... of 20.....

**Notice of referral to the Road Freight Transport Industry Tribunal**

TAKE NOTICE THAT .....

(state name, address and telephone number of applicant — the categories of persons who may refer a dispute or matter are set out in the *Owner-Drivers (Contracts and Disputes) Act 2007* section 40)

has this day referred to the Tribunal —

(state nature of dispute or matter and identify whether the dispute or matter arises under the *Owner-Drivers (Contracts and Disputes) Act 2007* section 40(a), (b) or (c) or more than one of those paragraphs)

The grounds on which the referral is made are —

(state the name, address and telephone number of owner-driver and of hirer (if not set out above) and the details of the claim, including any relevant terms of the owner-driver contract; or any relevant terms of the code of conduct alleged to be breached; or any alleged circumstances of a breach of the *Owner-Drivers (Contracts and Disputes) Act 2007*; or any relevant conduct complained of in respect of negotiations for an owner-driver contract — attach schedule if necessary)

.....  
(signature/seal of applicant or  
signature of applicant's solicitor or agent)

(Stamp of Commission)

*[Form 7A inserted in Gazette 10 Jun 2008 p. 2494; amended in  
Gazette 10 Jul 2009 p. 2742.]*

**Form 8 — Notice of appeal from Board of Reference**

[r. 118(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of appeal from Board of Reference**

To: .....  
.....  
(name, address and telephone number of respondent/s)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of appellant/s)

has this day instituted an appeal to the Commission in Court Session against the  
decision given on the ..... day of ..... 20 .....

by the Board of Reference constituted for the purposes of  
.....  
(state name and number of award, order, or General Order)

in respect of —  
.....  
.....  
(state briefly the subject matter of the Board's decision)

on the ground/s set forth in the attached schedule.

.....  
.....  
(signature of appellant/s)

This form must be completed by the appellant, signed and, where necessary, sealed by  
him or her and a statement of the grounds of appeal must be attached.

(Stamp of Commission)

*[Form 8 amended in Gazette 10 Jul 2009 p. 2743; 12 Oct 2010  
p. 5155.]*

**Form 9A — Notice of appeal under *Vocational Education and Training Act 1996***

[r. 101(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of appeal under *Vocational Education and Training Act 1996***

To: .....

.....

(name, address and telephone number of respondent/s)

TAKE NOTICE THAT .....

.....

(name, address and telephone number of appellant/s)

has this day instituted an appeal to the Commission against the decision given on the  
..... day of ..... 20 .....

by the chief executive officer of the department principally assisting the Minister to  
administer the *Vocational Education and Training Act 1996*

or

.....

(state title of person who gave decision)

in respect of —

.....

.....

(state briefly the subject matter of the decision)

on the ground/s set out in the attached schedule.

.....

(signature of appellant/s)

This form must be completed by the appellant, signed and, where necessary, sealed by  
him or her and a statement of the grounds of appeal must be attached.

(Stamp of Commission)

*[Form 9A inserted in Gazette 16 Jun 2009 p. 2190-1; amended in  
Gazette 12 Oct 2010 p. 5155.]*

**Form 9 — Notice of appeal to Full Bench**

[r. 99 and 102(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of appeal to Full Bench**

To: .....  
.....  
(name, address and telephone number of respondent/s)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of appellant/s)

has this day instituted an appeal against the decision of the Commission constituted by  
.....  
(name of Commissioner, Government School Teachers Tribunal, Public Service Arbitrator,  
Railways Classification Board)

given on the ..... day of ..... 20 .....

in matter numbered ..... of ..... or the following parts  
or parts of that decision namely:

.....  
on the ground/s set forth in the attached schedule.

.....  
(signature of appellant/s)

The appropriate fee must be paid upon lodgment of this appeal.

NOTE 1: This form must be completed by the appellant, signed and, where necessary,  
sealed by him or her and a statement of the grounds of appeal must be  
attached.

NOTE 2: An appeal book in accordance with the *Industrial Relations Commission  
Regulations 2005* must be filed and served on the respondent/s within  
fourteen (14) days of the filing of this notice.

(Stamp of Commission)

*[Form 9 amended in Gazette 10 Jul 2009 p. 2743.]*



**Form 10 — Notice of appeal to Public Service Arbitrator / Railway  
Classifications Board**

[r. 106(1) and 111(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

**Notice of appeal to Public Service Arbitrator / Railway  
Classifications Board**

To: ..... Tel. No.: .....  
 ..... Postcode: .....  
 (name and address of respondent/employer)

TAKE NOTICE THAT .....  
 .....  
 (name, address and telephone number of appellant)

has this day instituted an appeal against the salary/range of salary/title\* of the office  
 occupied by me. (\*delete whichever is inapplicable)

Particulars of office to which appeal relates	Position No.	Classification	Title
	Section	Branch	Division

Claim

Grounds of  
Appeal

Tick the box if the statement is appropriate —

- ☐ An appeal relating to the above position has not been lodged within the last  
12 months;
- ☐ I wish to represent myself; or
- ☐ I authorise the following organisation/person\* to act as my agent.

.....  
 (name, address and telephone number of agent)

.....  
 (signature of appellant/s)

The appropriate fee must be paid upon lodgment of this appeal.

(Stamp of Commission)

*[Form 10 amended in Gazette 10 Jul 2009 p. 2743.]*

**Form 11 — Notice of appeal to Public Service Appeal Board**

[r. 107(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of appeal to Public Service Appeal Board**

To: .....  
.....  
(name, address and telephone number of respondent/s)

TAKE NOTICE THAT .....  
.....  
(name, address and telephone number of appellant/s)

has this day instituted an appeal against the decision .....  
.....  
(give details of the decision)

given on the ..... day of ..... 20 .....

on the following grounds:

.....  
.....  
.....  
(attach schedule if necessary)

.....  
(signature of appellant/s)

The appropriate fee must be paid upon lodgment of this appeal.

The appellant is required to sign this notice.

(Stamp of Commission)

*[Form 11 amended in Gazette 10 Jul 2009 p. 2743.]*

**Form 12 — Notice of application to enforce the *Industrial Relations Act 1979***

[r. 60(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of application to enforce the *Industrial Relations Act 1979***

To: .....  
.....  
(name and address of respondent/s)

TAKE NOTICE THAT .....  
(Minister / Registrar / Deputy Registrar / Industrial Inspector / Interested person)

has this day applied to the Full Bench of the Western Australian Industrial Relations

Commission for the enforcement of .....  
(specify part of the Act, direction, order or declaration alleged to be breached)

You are therefore summoned to appear before the Full Bench of the Western  
Australian Industrial Relations Commission at 111 St George's Terrace, Perth

in court number .....

on ..... the ..... day of ..... 20 .....  
(day of the week) (date) (month) (year)

at ..... o'clock in the ..... a.m./p.m.

to answer the application for enforcement of that.....  
(Act, direction, order or declaration)

under the *Industrial Relations Act 1979* section 84A.

Dated at Perth this ..... day of ..... 20 .....

.....  
(signature of applicant)

The appropriate fee must be paid upon lodgment of this application.

NOTE: Where this application is initiated other than by the Registrar it shall be  
signed and where necessary, sealed by the applicant.

(Stamp of Commission)

*[Form 12 amended in Gazette 28 Apr 2006 p. 1653.]*

**Form 13 — Notice of objection**

[r. 15(1), 66(3), 67(3), 68(4), 69(5) and 71(3)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

IN THE MATTER OF  
an application for

.....  
(state nature of application)

**Notice of objection**

Name, address and  
telephone number of  
objector

.....

The abovenamed objector objects to the whole (or any part) of the abovementioned  
application.

.....  
.....

(if part only, specify part objected to)

The grounds of objection are:

.....  
.....

(attach schedule if necessary)

The objector is or is likely to be affected by the application in the following manner,  
namely:

.....  
.....

(attach schedule if necessary)

Dated this ..... day of ..... 20.....

.....  
(signature of objector)

The appropriate fee is to be paid upon lodgment of this notice.

(Stamp of Commission)

*[Form 13 inserted in Gazette 28 Apr 2006 p. 1653-4; amended in  
Gazette 10 Jul 2009 p. 2743.]*

**Form 14 — Notice of withdrawal or discontinuance**

[r. 16(1) and (4) and 99]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

**Notice of withdrawal or discontinuance**

To: .....  
.....  
(name and address of respondent/s)

TAKE NOTICE THAT .....  
.....  
(name and address of applicant/s)

the applicant hereby discontinues or withdraws this application or the following part of  
the claim, namely —  
.....  
(if part only, specify part withdrawn or discontinued)

Dated this ..... day of ..... 20.....

.....  
.....  
(signature of applicant/s)

NOTE: After being filed, a copy of the notice must be served on every respondent  
directly affected by it.

Where a counter-proposal has been filed in answer to an application the  
application may only be withdrawn or discontinued with the consent of the  
respondent making the counter-proposal.

(Stamp of Commission)

*[Form 14 inserted in Gazette 28 Apr 2006 p. 1654; amended in  
Gazette 10 Jul 2009 p. 2743.]*

**Form 15 — Notice of hearing**

[r. 32(2), 99 and 103(8)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

In the matter of:      [state nature of matter]

Between .....  
(applicant)

and .....  
(respondent)

**Notice of hearing**

To: .....  
.....  
(name and address)

TAKE NOTICE that the (insert constitution of Commission) will sit at 111 St. George's Terrace, Perth in court number ..... on level ..... on ..... at ..... a.m./p.m. to hear the abovementioned matter.

Dated this ..... day of ..... 20 .....

Registrar

(Stamp of Commission)

*[Form 15 inserted in Gazette 28 Apr 2006 p. 1655.]*

**Form 16 — Notice to admit**

[r. 23(1) and 99]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

Between .....  
(applicant)

and .....  
(respondent)

**Notice to admit**

To: .....  
.....  
(name and address)

TAKE NOTICE that you are required within 7 days of receiving this notice to admit or deny in writing the following facts —

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

(attach schedule if necessary)

and TAKE FURTHER NOTICE that should you fail to reply to this notice within 7 days or such other time as the Commission upon your application may direct you may be liable to pay the costs of establishing those facts before the Commission.

Dated this ..... day of ..... 20 .....

.....  
.....  
(signature of party issuing this notice)

NOTE: This form must be completed and signed by the party requesting the admission or denial of the facts referred to above.

(Stamp of Commission)

*[Form 16 amended in Gazette 28 Apr 2006 p. 1655.]*

**Form 17 — Summons to witness**

[r. 41(1) and 99]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

Between .....  
(applicant)

and .....  
(respondent)

**Summons to witness**

To: .....  
.....  
(full name, occupation and address)

You are summoned to appear before the Commission at .....

on .....the ..... day of ..... 20 .....

at ..... o'clock in the ..... a.m./p.m.

and after that from day to day until discharged from attendance, to —

- (1) give evidence concerning the abovementioned matter;  
and  
(delete if not applicable) (2) produce all books, papers, or other documents in your possession  
or under your control in any way relating to the proceedings in  
the said matter and in particular (but not exclusively) the  
following:

.....  
.....

This summons has been taken out by.....  
.....  
(name and address of party taking out summons)

If you fail or neglect to comply with this summons you are liable to a penalty.

The appropriate fee must be paid upon lodgment of this summons.

(Stamp of Commission)



**Form 18 — Warrant to appear as agent**

[r. 63(1) and (3) and 99]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

Between .....  
(applicant)

and .....  
(respondent)

**Warrant to appear as agent**

.....  
.....  
(insert name, address and telephone number of agent)

is hereby authorised to appear and act, in the abovementioned proceedings, for

.....  
.....  
(name of party for whom agent is appearing and acting)

This warrant also authorises the agent to receive mail, including email or fax, from the Commission for and on behalf of the party for whom the agent is appearing and acting.

(delete if not applicable)

(affix seal where necessary)

.....  
(signature of party for whom the agent is appearing)

Dated this ..... day of ..... 20 .....

This warrant must be served on all other parties to the application for which the warrant is filed.

(Stamp of Commission)

*[Form 18 amended in Gazette 28 Apr 2006 p. 1655-6; 10 Jul 2009 p. 2743.]*

**Form 19 — Application for registration of organisation/association**

[r. 66(1), 67(1) and 68(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Application for registration of organisation/association**

To the Registrar:

An application for registration under Part II Division 4 of the *Industrial Relations Act 1979* is made by —

.....  
.....

(name of organisation/association)

The following documents are lodged in support of this application —

- (1) a list containing the full names and addresses of officers of the organisation/association;
- (2) a certified copy of the rules of the organisation/association;
- (3) a copy of the resolution authorising the application.

The registered office of the organisation/association will be situated at —

.....  
.....

.....  
(name and telephone number of person signing for  
and on behalf of the organisation/association)

Dated at Perth this ..... day of ..... 20 .....

The appropriate fee must be paid upon lodgment of this application.

(Stamp of Commission)

*[Form 19 amended in Gazette 10 Jul 2009 p. 2744.]*

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**Form 20 — Application to register additions, alterations or revisions of the  
name or rules of a registered organisation or association**

[r. 69(1) and (2), 70(1) and (2) and 71(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

**Application to register additions, alterations or revisions of the name or  
rules of a registered organisation or association**

To the Full Bench/Registrar:

An application is made by —

.....  
.....  
(name of organisation/association)

an organisation/association registered under the *Industrial Relations Act 1979* for the  
registration or alteration to the name/rules of the organisation/association, the  
particulars of which are attached to this Form. The alterations were proposed by the  
organisation/association in accordance with its rules and the Act on —

.....  
(date alterations were proposed)

.....  
(name and telephone number of person signing for and on  
behalf of the organisation/association)

Dated at Perth this ..... day of ..... 20 .....

The appropriate fee must be paid upon lodgment of this application.

(Stamp of Commission)

*[Form 20 amended in Gazette 10 Jul 2009 p. 2744.]*

**Form 21 — Summons for cancellation or suspension of registration of  
organisation/association**

[r. 74(2)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

**Summons for cancellation or suspension of registration of  
organisation/association**

To: .....  
.....  
(name and address of organisation/association)

TAKE NOTICE that you are required to appear before the Full Bench of the Western  
Australian Industrial Relations Commission at 111 St George's Terrace, Perth  
on .....the ..... day of ..... 20 .....  
at ..... o'clock in the ..... a.m./p.m.  
and after that as required, to show cause why the registration of the organisation should  
not be cancelled or suspended under the *Industrial Relations Act 1979* section 73.

Dated at Perth this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

---

**Form 22 — Request by an organisation/association to cancel its registration**

[r. 75(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Request by an organisation/association to cancel its registration**

To the Registrar:

A request is made by —

.....  
.....

(name of organisation/association)

an organisation/association registered under the *Industrial Relations Act 1979* for the cancellation of that registration.

The grounds on which the request is made are:

.....  
.....

(attach schedule if necessary)

The number of members whose names are at present lawfully on the register of members kept by the organisation/association is .....

The number of members present at the meeting which resolved to seek the cancellation/suspension of the organisation/association was .....

The number in favour of this action was .....

.....  
(name and telephone number of person signing for and on behalf of the organisation/association)

Dated at Perth this ..... day of ..... 20 .....

(Stamp of Commission)

*[Form 22 amended in Gazette 28 Apr 2006 p. 1656; 10 Jul 2009 p. 2744.]*

**Form 23 — Application to cancel registration of organisation/association**

[r. 76(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20 .....

**Application to cancel registration of organisation/association**

To: .....  
.....  
(name and address of organisation/association)

TAKE NOTICE that that the Registrar has this day applied to have the registration of —  
.....  
(name of organisation/association)

cancelled on the following grounds —  
.....  
.....  
.....  
(grounds for cancellation)

AND TAKE NOTICE that notice of any objection to the cancellation must be given in writing in accordance with Form 13 within 14 days of the service of this application.

Dated at Perth this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

*[Form 23 amended in Gazette 28 Apr 2006 p. 1656.]*

---

**Form 24 — Certificate of registration as an organisation**

[r. 77(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

**Certificate of registration as an organisation**

I certify that the organisation called —

.....  
(name of organisation)

whose registered office is at —

.....  
(address of organisation)

has this day been duly registered as an organisation under the *Industrial Relations Act 1979*, and, under section 60 of that Act, is a body corporate.

Given under my hand this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

**Form 25 — Certificate of registration as an industrial association**

[r. 77(2)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

**Certificate of registration as an industrial association**

I certify that the association called —

.....  
(name of association)

whose registered office is at —

.....  
(address of association)

has this day been duly registered as an industrial association under the *Industrial Relations Act 1979*, and, pursuant to sections 60 and 67 of that Act, is a body corporate.

Given under my hand this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)



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**Form 26 — Certificate of registration as an organisation formed  
by amalgamation**

[r. 77(3)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

**Certificate of registration as an organisation formed by amalgamation**

I certify that the organisations formerly registered under the names —

1 .....  
(organisation)

2 .....  
(organisation)

have this day been duly registered under the *Industrial Relations Act 1979*, as one  
organisation by the name —

.....  
(organisation)

and that organisation is, pursuant to section 60 of that Act, a body corporate.  
The registrations of the organisations referred to in items 1 and 2 above are this day  
cancelled.

Given under my hand this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

**Form 27 — Certificate of registration of alteration of rules**

[r. 77(4)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

**Certificate of registration of alteration of rules**

I certify that the annexed alteration of rules of —

.....  
(organisation/association)

have this day been duly registered at my office under the provisions of the *Industrial Relations Act 1979*.

The rules altered are —

.....

Given under my hand this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

---

**Form 28 — Certificate of registration of change of name**

[r. 77(5)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

**Certificate of registration of change of name**

I certify that on ..... day of ..... 20 .....  
on the hearing of an application duly made on behalf of the organisation/association  
formerly registered under the title of —

.....  
(organisation/association)

the Full Bench consented to the name of the organisation/association being changed to  
read, and that name is accordingly now registered as —

.....

Given under my hand this ..... day of ..... 20 .....

.....  
(signature of Registrar)

(Stamp of Commission)

**Form 29 — Application by secretary for authority to be issued**

[r. 82(1)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Application by secretary for authority to be issued**

To the Registrar:

An application is made by —

.....  
(name of secretary of organisation)

the secretary of —

.....  
.....  
(name, address and telephone number of organisation)

for the issue of an authority under section 49J of the *Industrial Relations Act 1979* to the following person —

.....  
.....  
(name, address and telephone number of person)

.....  
(signature of organisation secretary)

Dated at Perth this..... day of ..... 20 .....

*[Form 29 amended in Gazette 10 Jul 2009 p. 2744.]*

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**Form 30 — Application by secretary for revocation of an authority**

[r. 82(2)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Application by secretary for revocation of an authority**

To the Registrar:

An application is made under section 49J(6) of the *Industrial Relations Act 1979* by —

.....  
(name of secretary of organisation)

the secretary of —

.....  
.....  
(name, address and telephone number of organisation)

for the revocation of an authority issued under section 49J of that Act to —

.....  
.....  
(name, address and telephone number of person)

.....  
(signature of organisation secretary)

Dated at Perth this..... day of ..... 20 .....

*[Form 30 amended in Gazette 28 Apr 2006 p. 1656; 10 Jul 2009  
p. 2744.]*

**Form 31 — Notice of appeal against a decision of the Commissioner of Police to take removal action**

[r. 90]

*[Heading amended in Gazette 22 Dec 2009 p. 5272.]*

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of appeal against a decision of the Commissioner of Police to take removal action**

To the Commissioner of Police

TAKE NOTICE THAT .....

.....  
(name, address and telephone number of appellant/s)

has this day instituted an appeal under section 33P of the *Police Act 1892* against your decision under section 33L of that Act to remove him/her from office with effect from —

the ..... day of ..... 20 .....

The reasons why the decision is harsh, oppressive or unfair are —

.....  
.....  
(give details of the decision — attach schedule if necessary)

The relief sought is .....  
(state whether the removal is sought to be of no effect or whether compensation is sought)

.....  
(signature of appellant/s)

NOTE1: This Notice of appeal is to be served by the appellant upon the Commissioner of Police within 7 days after it is filed in the office of the Registrar.

NOTE2: Proof of service of the notice on the Commissioner of Police is to be given in accordance with the *Industrial Relations Commission Regulations 2005* regulation 28.

(Stamp of Commission)

*[Form 31 amended in Gazette 10 Jul 2009 p. 2744; 22 Dec 2009  
p. 5272.]*

## Notes

- <sup>1</sup> This is a compilation of the *Industrial Relations Commission Regulations 2005* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	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)
<b>Reprint 1: The Industrial Relations Commission Regulations 2005 as at 16 May 2008</b> (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 <sup>2</sup> (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	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))
<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))



<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<b>Reprint 2: The Industrial Relations Commission Regulations 2005 as at 2 Oct 2009</b> (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> )		
<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> r. 1-5	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))

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Industrial Relations Commission Amendment Regulations 2012</i> r. 6 and 7 <sup>3</sup>	16 Mar 2012 p. 1252-5	1 Apr 2012 (see r. 2(b) and <i>Gazette</i> 16 Mar 2012 p. 1246)

<sup>2</sup> The specified commencement date of 1 Jul 2008 in the *Industrial Relations Commission Amendment Regulations (No. 2) 2008* cannot override s. 25(3) of the *Interpretation Act 1984*. These regulations came into operation (ie. 1 Aug 2008) when the *Owner-Drivers (Contracts and Disputes) Act 2007* Sch. 3 cl. 1 came into operation.

<sup>3</sup> On the date as at which this compilation was prepared, the *Industrial Relations Commission Amendment Regulations 2012* r. 6 and 7 had not come into operation. They read as follows:

**6. Regulation 102A inserted**

At the end of Part 11 Division 1 insert:

**102A. Review of decisions of the 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 form of Form 9B.
- (3) A person who lodges a notice of referral under subregulation (2) must, upon the return to him or her of the stamped copies of the notice, serve a stamped copy 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) A person who lodges an application under subregulation (6) must, upon the return to him or her of the stamped copies of the application, serve a stamped copy on —
- (a) the chief executive officer of the Board; and
  - (b) each other person who was a party to the proceedings before the Board.

**7. Schedule 1 amended**

In Schedule 1 after Form 9A insert:

**Form 9B — Notice of review of a decision of the Construction Industry Long Service Leave Payments Board**

[r. 102A(2)]

*Industrial Relations Act 1979*

In the Western Australian Industrial Relations Commission

No. .... of 20.....

**Notice of review of a decision of the Construction Industry Long Service Leave Payments Board**

To: The Construction Industry Long Service Leave Payments Board

.....

.....

(name, address and telephone number of respondent/s)

TAKE NOTICE THAT

.....

.....

(name, address and telephone number of applicant)

has this day referred the decision of the Construction Industry Long Service Leave Payments Board

.....

(give details of the decision)

given on the ..... day of ..... 20 .....

for review to the Commission under the *Construction Industry Portable Paid Long Service Leave Act 1985* section 50 on the following grounds:

---

.....  
.....  
.....  
(attach schedule if necessary)

.....  
(signature of applicant)

(Stamp of Commission)

## 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 .....	89
appellant .....	89
applicant .....	99A
Arbitrator .....	105
Board .....	105, 109
Commission .....	3
Commissioner of Police .....	89
decision .....	65(3)
discovery .....	20(1)
document .....	20(1)
electronic document .....	3
employer .....	105
expert's report .....	45(1)
Form .....	3
Government officer .....	105
inspection .....	20(1)
interested person .....	86(1)
member of a constituent authority .....	120(8)
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proof of service .....	3
Public Transport Authority .....	109
railway officer .....	109
Registrar .....	3
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