



Western Australia

Industrial Relations Act 1979

Industrial Relations (Employer- employee Agreements) Regulations 2002

As at 19 Jul 2013

Version 00-b0-01

Extract from www.slp.wa.gov.au, see that website for further information

Industrial Relations (Employer-employee Agreements) Regulations 2002

CONTENTS

Part 1 — Preliminary		
1.	Citation	1
2.	Commencement	1
Part 2 — Definition of “relevant order”		
3.	Definitions	2
4.	Orders prescribed for definition of “relevant order”	2
Part 3 — Disputes		
Division 1 — Requirements for EEA dispute provisions		
5.	Purpose of this Division	4
6.	Definitions	4
7.	Notice of dispute	4
8.	Settlement agreement	4
9.	Notice of proposed arbitrator	5
10.	Notice of proposed arbitrator where specified arbitrator not available	5
11.	Notice of a proposed arbitrator may be given once only	6
12.	Referral of dispute for arbitration	6
13.	Default appointment	7
14.	Time for making default appointment	7
Division 2 — Referral for arbitration by relevant industrial authority		

Contents

	Subdivision 1 — Preliminary	
15.	Purpose of this Division	8
16.	Definitions	8
	Subdivision 2 — Filing of documents	
17.	Application	9
18.	Presentation at office	9
19.	Registered post	9
20.	Facsimile transmission	9
21.	Electronic data transmission	10
22.	Agent may act for a party	10
23.	General requirements for documents	11
24.	Register	11
	Subdivision 3 — Referral for arbitration	
25.	How referral made	11
26.	Service of form of referral	12
27.	Answer	12
	Subdivision 4 — Other provisions as to service	
28.	Service by electronic means	12
29.	Service on agent	13
30.	Proof of service	13
	Subdivision 5 — General	
31.	Application for and notice of hearing	14
32.	Access to order and determinations	14
	Division 3 — Other provisions relating to disputes	
33.	Model EEA dispute provisions	15
34.	Limit on arbitration costs to be borne by employee	16
35.	Lodgment by arbitrator of order or determination	16
36.	Failure of arbitrator to lodge order or determination	17
	Part 4 — Countersigning of EEA made with minor	
37.	Purpose of this Part	18
38.	Definitions	18
39.	Classes prescribed	18
40.	Circumstances prescribed	18
	Part 5 — Lodgment of EEAs for registration	

	Division 1 — Requirements for lodgment	
41.	This Part to be complied with	20
42.	Registrar to approve forms	20
43.	Lodgment by employer	20
44.	Lodgment by employee	21
45.	Lodgment of revised EEA	21
46.	Other requirements	22
47.	Extension of time if office of Registrar closed	22
	Division 2 — Methods of lodgment	
48.	Application of this Division	22
49.	Presentation at office	23
50.	Registered post	23
51.	Facsimile transmission	23
52.	Electronic data transmission	24
	Part 6 — Section 97XT of the Act: restrictions on inspection of register	
53.	Registrar to be satisfied of reason for inspection	25
54.	Protected information	25
	Schedule 1 — Filing or lodgment of documents by electronic data transmission	26
1.	Requirements for electronic data transmission	26
2.	Documents required for service	26
3.	Paper copy of document to be kept	27
	Schedule 2 — Requirements for contents of approved forms	28
1.	Form of referral to a relevant industrial authority	28
2.	Form of statement of service	28
3.	Form for lodgment of order or determination of arbitrator	28
4.	Form for lodgment of EEA for registration	28
5.	Form of employer's statement	29
6.	Form of employee's statement	30
7.	Form for lodgment of revised EEA under section 97VE of the Act	31

Contents

8.	Form for lodgment of revised EEA under section 97VO of the Act	31
	Schedule 3 — Model EEA dispute provisions	32
	Division 1 — Model provisions where —	32
	• a relevant industrial authority is not the arbitrator of disputes; and	32
	• the employee is not a represented person	32
	Subdivision 1 — Preliminary	
1.	Definitions	32
2.	Joint arbitrations not affected	32
3.	<i>Commercial Arbitration Act 1985</i> not applicable	32
	Subdivision 2 — Notice of dispute, and duty to attempt settlement	
4.	Notice of dispute	32
5.	Withdrawal of notice	33
6.	Parties must try to settle dispute	33
7.	Settlement agreement	33
	Subdivision 3 — Appointment of arbitrator	
8.	Arbitrator specified	33
9.	Appointment by agreement	34
10.	Default appointment	35
11.	Appointment of substitute arbitrator	36
	Subdivision 4 — Referral for arbitration	
12.	Referral available only if there is an arbitrator	36
13.	Joint referral at any time	37
14.	Referral to arbitration within 42 days after notice given	37
15.	How referral made	37
	Subdivision 5 — Arbitration proceedings	
16.	Hearings	37
17.	Proceedings to be informal and speedy	38
18.	Absence of party	38
19.	General power of arbitrator as to proceedings	38
	Subdivision 6 — Costs of arbitration	
20.	Arbitrator's services	38
21.	Costs of representation	39

	Division 2 — Model provisions where —	39
	• a relevant industrial authority is not the arbitrator of disputes; and	39
	• the employee is a represented person	39
	Subdivision 1 — Preliminary	
1.	Definitions	39
2.	Joint arbitrations not affected	39
3.	<i>Commercial Arbitration Act 1985</i> not applicable	39
	Subdivision 2 — Notice of dispute, and duty to attempt settlement	
4.	Notice of dispute	40
5.	Withdrawal of notice	40
6.	Parties must try to settle dispute	40
7.	Settlement agreement	41
	Subdivision 3 — Appointment of arbitrator	
8.	Named arbitrator	41
9.	Appointment by agreement	41
10.	Default appointment	42
11.	Appointment of substitute arbitrator	43
	Subdivision 4 — Referral for arbitration	
12.	Referral available only if there is an arbitrator	44
13.	Joint referral at any time	44
14.	Referral to arbitration within 42 days after notice given	44
15.	How referral made	44
	Subdivision 5 — Arbitration proceedings	
16.	Hearings	45
17.	Proceedings to be informal and speedy	45
18.	Absence of party	45
19.	General power of arbitrator as to proceedings	45
	Subdivision 6 — Costs of arbitration	
20.	Arbitrator's services	46
21.	Costs of representation	46
	Division 3 — Model provisions where —	46
	• a relevant industrial authority is the arbitrator of disputes; and	46
	• the employee is not a represented person	46

Contents

	Subdivision 1 — Preliminary	
1.	Definitions	47
2.	Joint arbitrations not affected	47
3.	<i>Commercial Arbitration Act 1985</i> not applicable	47
	Subdivision 2 — Notice of dispute, and duty to attempt settlement	
4.	Notice of dispute	47
5.	Withdrawal of notice	47
6.	Parties must try to settle dispute	48
7.	Settlement agreement	48
	Subdivision 3 — Referral for arbitration	
8.	Joint referral at any time	48
9.	Referral to arbitration within 42 days after notice given	48
10.	How referral to be made	49
	Subdivision 4 — Arbitration proceedings	
11.	Hearings	49
12.	Proceedings to be informal and speedy	49
13.	Absence of party	49
14.	General powers as to proceedings	49
	Division 4 — Model provisions where —	50
	• a relevant industrial authority is the arbitrator of disputes; and	50
	• the employee is a represented person	50
	Subdivision 1 — Preliminary	
1.	Definitions	50
2.	Joint arbitrations not affected	50
3.	<i>Commercial Arbitration Act 1985</i> not applicable	51
	Subdivision 2 — Notice of dispute, and duty to attempt settlement	
4.	Notice of dispute	51
5.	Withdrawal of notice	51
6.	Parties must try to settle dispute	51
7.	Settlement agreement	52
	Subdivision 3 — Referral for arbitration	
8.	Joint referral at any time	52
9.	Referral to arbitration within 42 days after notice given	52

10.	How referral to be made	52
	Subdivision 4 — Arbitration proceedings	
11.	Hearings	53
12.	Proceedings to be informal and speedy	53
13.	Absence of party	53
14.	General powers as to proceedings	53
	Notes	
	Compilation table	55
	Provisions that have not come into operation	55

Western Australia

Industrial Relations Act 1979

Industrial Relations (Employer-employee Agreements) Regulations 2002

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

2. Commencement

These regulations come into operation on the day on which section 4 of the *Labour Relations Reform Act 2002* comes into operation.

Part 2 — Definition of “relevant order”

3. Definitions

In this Part —

General Order in regulation 4(2) means a General Order made under section 50 of the Act as the Order is amended from time to time;

prescribed means prescribed for the purposes of the definition of “relevant order” in section 97VR of the Act.

4. Orders prescribed for definition of “relevant order”

- (1) A General Order made under section 51 of the Act, as amended from time to time, adjusting the rates of wages paid to employees under awards is prescribed in the case of any employee.
- (2) Each of the following General Orders is prescribed in the case of an employee to whom the order would apply in the event of the EEA concerned not taking effect —
 - (a) the General Order relating to long service leave —
 - (i) made by the Commission on 27 January 1978; and
 - (ii) published in the *Industrial Gazette* on 22 February 1978 at page 120,
and the Schedule attached to that order published in the *Industrial Gazette* on 25 January 1978 at pages 1 to 6;
 - (b) the General Order relating to location allowances in private awards —
 - (i) made by the Commission on 21 June 2002; and
 - (ii) published in the *Industrial Gazette* on 24 July 2002 at pages 1185 to 1188;

- (c) the General Order relating to State Government wages employees' long service leave conditions —
 - (i) made by the Commission on 16 December 1985; and
 - (ii) published in the *Industrial Gazette* on 26 March 1986 at pages 319 to 321;
 - (d) the General Order relating to location allowances in Government awards —
 - (i) made by the Commission on 16 April 1991; and
 - (ii) published in the *Industrial Gazette* on 28 August 1991 at pages 2007 to 2009;
 - (e) the Western Australian Government Employees Redeployment, Retraining and Redundancy General Order —
 - (i) made by the Commission on 12 November 1993; and
 - (ii) published in the *Industrial Gazette* on 23 March 1994 at pages 552 to 556.
- (3) A General Order referred to in subregulation (1) or (2) is prescribed to the extent that it is in force at the time when —
- (a) the employer gives documents to the employee for the purposes of section 97UG of the Act; or
 - (b) a determination is required to be made for the purposes of section 97VS(4) or (5) of the Act,
- as the case may require.

Part 3 — Disputes

Division 1 — Requirements for EEA dispute provisions

5. Purpose of this Division

This Division specifies —

- (a) for the purposes of section 97UO(2)(b) of the Act, certain steps that are to be part of all EEA dispute provisions; and
- (b) for the purposes of section 97UO(2)(c) of the Act, the time limits that such provisions may allow for taking certain steps.

6. Definitions

- (1) In this Division —

dispute means a question, dispute or difficulty that arises out of or in the course of employment under an EEA.

- (2) If an employee is a represented person, references in this Division to “employee” and “party” include the employee’s representative.

7. Notice of dispute

All EEA dispute provisions must provide to the effect that, if an employer or an employee considers that a dispute has arisen, he or she may give notice in writing to the other party —

- (a) stating that fact; and
- (b) setting out a brief description of the dispute.

8. Settlement agreement

All EEA dispute provisions must provide to the effect that if —

- (a) notice of a dispute is given by an employer or an employee; and

- (b) the employer and employee settle the dispute by agreement,

the terms of the settlement must be recorded in a written agreement that is signed by both parties.

9. Notice of proposed arbitrator

- (1) This regulation applies to EEA dispute provisions that do not name or designate an arbitrator to whom a dispute is to be referred.
- (2) All such provisions must provide to the effect that, if notice of a dispute is given under a provision of the kind described in regulation 7, the employer or the employee may give notice in writing to the other party (*notice of a proposed arbitrator*) setting out —
 - (a) the name of a person that he or she wishes to act; or
 - (b) the names of several persons one of whom he or she wishes to act,

as arbitrator of the dispute.

- (3) The provisions must also indicate that if —
 - (a) notice of a proposed arbitrator is given under a provision of the kind described in subregulation (2); and
 - (b) the employer and the employee have not agreed on the person who is to act as arbitrator within 7 days after the day on which the notice is given,

provisions of the kind described in regulations 13(1) and 14(a) will apply to enable a default appointment to be made.

10. Notice of proposed arbitrator where specified arbitrator not available

- (1) This regulation applies to EEA dispute provisions that name or designate an arbitrator to whom a dispute is to be referred.
- (2) All such provisions must provide to the effect if —

- (a) notice of a dispute is given under a provision of the kind described in regulation 7; and
- (b) no named or designated arbitrator is available and willing to act,

the employer or the employee may give notice in writing to the other party (***notice of a proposed arbitrator***) setting out —

- (c) the name of a person that he or she wishes to act; or
- (d) the names of several persons one of whom he or she wishes to act,

as arbitrator of the dispute.

- (3) The provisions must also indicate that if —
 - (a) notice of a proposed arbitrator is given under a provision of the kind described in subregulation (2); and
 - (b) the employer and the employee have not agreed on the person who is to act as arbitrator within 7 days after the day on which the notice is given,

provisions of the kind described in regulations 13(2) and 14(a) will apply to enable a default appointment to be made.

11. Notice of a proposed arbitrator may be given once only

All EEA dispute provisions must provide to the effect that after a notice of a proposed arbitrator has been given in relation to a dispute —

- (a) the provision for the giving of such a notice ceases to apply to that dispute; and
- (b) neither party can give another notice of a proposed arbitrator.

12. Referral of dispute for arbitration

- (1) All EEA dispute provisions must provide to the effect that the parties may at any time jointly refer a dispute to an arbitrator

under the EEA dispute provisions if they have made a genuine attempt to settle the dispute but have failed to do so.

- (2) All EEA dispute provisions must provide to the effect that either party may refer a dispute to an arbitrator under the EEA dispute provisions if —
- (a) it is not settled by agreement; and
 - (b) the terms of the settlement are not recorded in a written agreement that is signed by both parties,

within 42 days from the day on which notice of the dispute was given under a provision of the kind described in regulation 7.

13. Default appointment

- (1) All EEA dispute provisions that do not name or designate an arbitrator to whom a dispute is to be referred must make provision for —
- (a) the appointment of an arbitrator of a dispute; or
 - (b) a means of having an arbitrator appointed,

(“**a default appointment**”) in the event that the employer and the employee cannot agree on the person who is to act.

- (2) All EEA dispute provisions that name or designate an arbitrator to whom a dispute is to be referred must make provision for —
- (a) the appointment of an arbitrator of a dispute; or
 - (b) a means of having an arbitrator appointed,

(“**a default appointment**”) in the event that no arbitrator named or designated in the EEA dispute provisions is available and willing to act.

14. Time for making default appointment

All EEA dispute provisions must provide to the effect that a default appointment is to be made if the parties have not agreed on the person who is to act as arbitrator at the expiration of —

- (a) 7 days after a notice of the kind described in regulation 9 or 10 was given in respect of the dispute; or
- (b) 42 days from the day on which notice of the dispute was given under a provision of the kind described in regulation 7,

whichever is the sooner.

Division 2 — Referral for arbitration by relevant industrial authority

Subdivision 1 — Preliminary

15. Purpose of this Division

This Division makes provision for —

- (a) the referral of a dispute for arbitration by a relevant industrial authority under a provision of the kind mentioned in section 97UP of the Act; and
- (b) certain related matters.

16. Definitions

In this Division —

agent means —

- (a) a bargaining agent; or
- (b) a legal practitioner;

dispute means a question, dispute or difficulty that arises out of or in the course of employment under an EEA;

party means the employer or the employee under the EEA concerned, and includes the representative of an employee who is a represented person;

referral means a referral under regulation 25.

Subdivision 2 — Filing of documents

17. Application

This Subdivision applies to the filing of a form of referral or other document mentioned in this Division.

18. Presentation at office

A document may be presented at the office of the Registrar between 8.00 a.m. and 5.00 p.m. on a day on which the office is open to the public for the transaction of business.

19. Registered post

- (1) A document may be sent by registered post addressed to the office of the Registrar.
- (2) If so sent, the document is to be treated as having been lodged on the day on which the posted article would have been delivered in the ordinary course of delivery of registered post.

20. Facsimile transmission

- (1) A document may be sent by transmission to a facsimile number used by the office of the Registrar accompanied by a cover sheet showing —
 - (a) the name, address and telephone number of the sender; and
 - (b) the number of pages sent, including the cover sheet.
- (2) If so sent, the document is to be treated as having been filed —
 - (a) on the day of transmission, if —
 - (i) that is on a day on which the office of the Registrar is open to the public for the transaction of business; and
 - (ii) the document is generated by 5.00 p.m. on that day on a facsimile machine in the office of the Registrar;

or

- (b) otherwise on the next day on which the office of the Registrar is open to the public for the transaction of business.
- (3) Subregulation (2) does not apply if the Registrar is of the opinion that —
- (a) the whole of every document was not received; or
 - (b) any part of a document is not legible.

21. Electronic data transmission

- (1) A document may be sent to the office of the Registrar by electronic data transmission in accordance with Schedule 1 and the provisions of that Schedule apply in respect of a document so sent.
- (2) A document so sent is to be treated as having been filed —
- (a) on the day of sending, if —
 - (i) that is on a day on which the office of the Registrar is open to the public for the transaction of business; and
 - (ii) by 5.00 p.m. on that day the document becomes capable of being printed as mentioned in Schedule 1 clause 1(d);

or

- (b) otherwise on the next day on which the office of the Registrar is open to the public for the transaction of business.

22. Agent may act for a party

- (1) A form of referral or other document referred to in this Division may be signed and filed or lodged by an agent on behalf of a party.
- (2) A document filed or lodged by an agent is to be —

- (a) filed or lodged in the name of the party; and
- (b) endorsed with the name of the agent and the fact that the agent is acting on behalf of the party.

23. General requirements for documents

- (1) A document may be excluded from filing if it —
 - (a) is not in the form required by this Division;
 - (b) is not legible in whole or in part; or
 - (c) is incomplete.
- (2) Subregulation (1) is not limited by regulation 19(2), 20(2) or 21(2).

24. Register

- (1) The Registrar is to keep a register of referrals.
- (2) Entries in the records kept for a referral are to be entered together and kept separate from entries that relate to any other referral.

Subdivision 3 — Referral for arbitration

25. How referral made

- (1) A referral of a dispute for arbitration by a relevant industrial authority under a provision of the kind mentioned in section 97UP of the Act is to be made by filing in the office of the Registrar —
 - (a) a referral in the form approved by the Registrar for the purposes of this regulation; and
 - (b) a copy of the EEA.
- (2) The approved form of referral is to be in accordance with Schedule 2 clause 1.
- (3) A referral may be made by one of the parties or by the parties jointly.

- (4) Without limiting regulation 22(1), a form of referral is to be signed by the referring party or parties.
- (5) If the form of referral is signed by a person, other than an agent, on behalf of an employer that is a firm or body corporate the capacity in which the person signs is to be shown.

26. Service of form of referral

- (1) If a referral is made by one party the Registrar is to serve on the other party a copy of the form of referral stamped by the Registrar.
- (2) When a form of referral is filed by a party in accordance with regulation 18 or 19(1) the copy required for service under subregulation (1) is to be lodged at the same time.

27. Answer

Where one party makes a referral the other party must within 21 days of being served with the form of referral —

- (a) file a notice setting out particulars of the party's answer; and
- (b) serve a copy of the notice on the other party.

Subdivision 4 — Other provisions as to service

28. Service by electronic means

- (1) A form of referral or other document relating to an arbitration under this Division may be served on a person —
 - (a) by sending it by facsimile transmission to a facsimile number provided by the person accompanied by a cover sheet showing —
 - (i) the name and address of the sender; and
 - (ii) the number of pages sent including the cover sheet;
- or

- (b) by sending it by electronic mail —
 - (i) to an address provided by the person; and
 - (ii) in an electronic format that enables it to be printed by the person.
- (2) A document sent in accordance with this regulation, is taken to have been served at the time when it was sent.
- (3) This regulation is in addition to the provisions as to the service of documents in sections 75 and 76 of the *Interpretation Act 1984*.

29. Service on agent

- (1) A person who is —
 - (a) a party; or
 - (b) the agent of a party,may give written notice to the Registrar and the other party stating that the agent whose name and other particulars are specified in the notice is authorised to accept service on behalf of the party.
- (2) If such a notice is given service of a document relating to the arbitration may be effected on the agent.

30. Proof of service

- (1) Proof of service of a document relating to an arbitration is to be given by a statement in the form approved by the Registrar for the purposes of this regulation.
- (2) The approved form is to be in accordance with Schedule 2 clause 2.
- (3) The statement of service is to be filed within 7 days of the day on which service was effected unless the hearing day is within that time, in which case the form is to be filed before or on the hearing day.

Subdivision 5 — General

31. Application for and notice of hearing

- (1) When all preliminary procedures have been completed, a party to a referral may file in the office of the Registrar an application to the relevant industrial authority for a time and place to be fixed for the arbitration hearing.
- (2) On the making of such an application the relevant industrial authority is to —
 - (a) fix a time and place for the hearing; and
 - (b) give each party at least 7 days' notice of that time and place.
- (3) Despite subregulation (1) —
 - (a) a party may lodge an application under that subregulation if the other party has failed to file and serve a notice under regulation 27; and
 - (b) a time and place for the hearing may be fixed by the relevant industrial authority on its own initiative if the relevant industrial authority considers it appropriate in the circumstances of the case to do so.

32. Access to order and determinations

Every order or determination made by the relevant industrial authority for the purposes of an arbitration to which this Division applies —

- (a) is to be sealed with the seal of the Commission;
- (b) is to be deposited in the office of the Registrar in a sealed envelope; and
- (c) is not to be open to inspection by any person other than —
 - (i) a party concerned in the arbitration; or

- (ii) a person who obtains the approval of the relevant industrial authority to inspect the order or determination.

Division 3 — Other provisions relating to disputes

33. Model EEA dispute provisions

- (1) The model EEA dispute provisions referred to in this regulation are prescribed for the purposes of section 97UN(4) of the Act.
- (2) The model provisions set out in Schedule 3 Division 1 are prescribed for cases where —
 - (a) under the EEA dispute provisions a relevant industrial authority is not the arbitrator of disputes; and
 - (b) the employee under the EEA is not a represented person.
- (3) The model provisions set out in Schedule 3 Division 2 are prescribed for cases where —
 - (a) under the EEA dispute provisions a relevant industrial authority is not the arbitrator of disputes; and
 - (b) the employee under the EEA is a represented person.
- (4) The model provisions set out in Schedule 3 Division 3 are prescribed for cases where —
 - (a) under the EEA dispute provisions a relevant industrial authority is the arbitrator of disputes; and
 - (b) the employee under the EEA is not a represented person.
- (5) The model provisions set out in Schedule 3 Division 4 are prescribed for cases where —
 - (a) under the EEA dispute provisions a relevant industrial authority is the arbitrator of disputes; and
 - (b) the employee under the EEA is a represented person.

34. Limit on arbitration costs to be borne by employee

- (1) This regulation applies to a provision of EEA dispute provisions that —
 - (a) provides for; or
 - (b) confers a power to determine,how the costs of an arbitration are to be borne.
- (2) The provision cannot have effect, or the power cannot be exercised, so as to result in the employee being liable for more than —
 - (a) one half of the costs of an arbitration; or
 - (b) the maximum amount,whichever is the lesser.
- (3) In this regulation —

costs of an arbitration does not include any cost relating to the representation of a party in arbitration proceedings;

maximum amount means the amount for all employees average weekly total earnings in Western Australia last published by the Australian Statistician before the day on which the relevant dispute was referred to the arbitrator.

35. Lodgment by arbitrator of order or determination

- (1) This regulation applies where, under section 97WP(2), a party has requested an arbitrator to lodge a copy of an order or determination with the Commission.
- (2) The arbitrator must lodge —
 - (a) a signed copy of the order or determination in the office of the Registrar; and
 - (b) a duly completed lodgment form as approved by the Registrar for the purposes of this regulation.

- (3) The approved lodgment form is to be in accordance with Schedule 2 clause 3.
- (4) The provisions of Part 5 Division 2 apply to the lodgment of documents under this regulation in the same way as they apply to the lodgment of an EEA under that Part.

36. Failure of arbitrator to lodge order or determination

- (1) This regulation applies if the arbitrator who made an order or determination —
 - (a) has died;
 - (b) is incapable of complying with subsection (2) of section 97WP of the Act; or
 - (c) fails for any other reason to comply with that subsection.
- (2) A party may lodge a copy of the order or determination with the Commission accompanied by a duly completed lodgment form as approved by the Registrar for the purposes of regulation 35.
- (3) An order or determination lodged under subregulation (2) is to be taken to have been duly lodged for the purposes of section 97WP(2) of the Act.

Part 4 — Countersigning of EEA made with minor

37. Purpose of this Part

This Part makes provision to enable an EEA referred to in section 97UM(1) of the Act to be countersigned if it is not countersigned by any legal guardian of the employee.

38. Definitions

In this Part —

countersign means sign the EEA after it has been signed by the employee, as mentioned in section 97UM(2) of the Act;

legal guardian means a person who is legally responsible for the day to day care and welfare of the employee, as mentioned in section 97UM(2)(a) of the Act;

relative means —

- (a) a person who has at least one parent in common with the employee;
- (b) a grandparent;
- (c) an uncle or aunt.

[Regulation 38 amended in Gazette 30 Jun 2003 p. 2608.]

39. Classes prescribed

The classes of persons who may act for the purposes of section 97UM(2)(b) of the Act are those who have reached the age of 18 years and —

- (a) are relatives of; or
- (b) have a close personal relationship with,

the employee.

40. Circumstances prescribed

The circumstances in which a person who belongs to a class referred to in regulation 39 may countersign an EEA are —

- (a) where there is for the time being no legal guardian of the employee;
- (b) where the legal guardian cannot, after reasonable enquiry, be found or contacted;
- (c) where the legal guardian has agreed that his or her distance from the place of residence of the employee makes it impractical for him or her to act under section 97UM(2) of the Act;
- (d) where the legal guardian has unreasonably refused —
 - (i) to act under section 97UM(2); or
 - (ii) to countersign the EEA;or
- (e) where the legal guardian is physically or mentally incapable of acting under section 97UM(2).

Part 5 — Lodgment of EEAs for registration

Division 1 — Requirements for lodgment

41. This Part to be complied with

A party to an EEA who wishes to lodge the EEA with the Registrar under section 97UY(1) of the Act must do so in accordance with this Part.

42. Registrar to approve forms

The Registrar is to approve —

- (a) a lodgment form in accordance with Schedule 2 clause 4;
- (b) a form of employer's statement in accordance with Schedule 2 clause 5;
- (c) a form of employee's statement in accordance with Schedule 2 clause 6 for cases where the employee is not a represented person; and
- (d) a form of employee's statement in accordance with Schedule 2 clause 6 for cases where the employee is a represented person.

43. Lodgment by employer

- (1) If the lodging party is the employer he or she must lodge in the office of the Registrar —
 - (a) the lodgment form accompanied by a signed copy of the EEA; and
 - (b) the employer's statement.
- (2) The employer may, when lodging the documents under subregulation (1), also lodge the employee's statement, but if he or she does not do so the employee must lodge the employee's statement not later than the end of the period that applies in respect of the EEA under section 97UY(2) of the Act.

44. Lodgment by employee

- (1) If the lodging party is the employee he or she must lodge in the office of the Registrar —
 - (a) the lodgment form accompanied by a signed copy of the EEA; and
 - (b) the employee's statement.
- (2) The employee may, when lodging the documents under subregulation (1), also lodge the employer's statement, but if he or she does not do so the employer must lodge the employer's statement not later than the end of the period that applies in respect of the EEA under section 97UY(2) of the Act.

45. Lodgment of revised EEA

- (1) This regulation applies where the parties wish to lodge a revised EEA —
 - (a) with the Registrar under section 97VE of the Act; or
 - (b) with a relevant industrial authority under section 97VO of the Act.
- (2) The parties must lodge in the office of the Registrar the relevant lodgment form referred to in subregulation (3) accompanied by a signed copy of the revised EEA.
- (3) The Registrar is to approve —
 - (a) a lodgment form in accordance with Schedule 2 clause 7 for the purposes of section 97VE of the Act; and
 - (b) a lodgment form in accordance with Schedule 2 clause 8 for the purposes of section 97VO of the Act.

46. Other requirements

The Registrar or a relevant industrial authority may refuse to accept an EEA or a revised EEA for lodgment if it or any accompanying form —

- (a) is not clearly written or typed on one side only of the page; or
- (b) is not in the English language.

47. Extension of time if office of Registrar closed

- (1) If the office of the Registrar is not open to the public for the transaction of business on the last day for lodgment, an EEA or revised EEA is taken to be lodged within the allowed period if —

- (a) it is lodged; or
- (b) it is treated under Division 2 as being lodged,

on the first day after that day on which the office is open to the public for the transaction of business.

- (2) In subregulation (1) —

last day for lodgment means —

- (a) in the case of an EEA, the last day on which it may be lodged under section 97UY(2) of the Act; and
- (b) in the case of a revised EEA, the last day on which it may be lodged in accordance with a notice under section 97VD(2)(b) or section 97VN(2)(b) of the Act.

Division 2 — Methods of lodgment

48. Application of this Division

- (1) This Division applies to the lodgment of the documents referred to in regulations 43, 44 and 45.
- (2) Nothing in regulation 50(2), 51(2) or 52(2) is to be read as limiting section 97UY(3) of the Act.

49. Presentation at office

The documents may be presented at the office of the Registrar between 8.00 a.m. and 5.00 p.m. on a day on which the office is open to the public for the transaction of business.

50. Registered post

- (1) The documents may be sent by registered post addressed to the office of the Registrar.
- (2) If so sent, the documents are to be treated as having been lodged on the day on which the posted article would have been delivered in the ordinary course of delivery of registered post.

51. Facsimile transmission

- (1) The documents may be sent by transmission to a facsimile number used by the office of the Registrar accompanied by a cover sheet showing —
 - (a) the name, address and telephone number of the sender; and
 - (b) the number of pages sent, including the cover sheet.
- (2) If so sent, the documents are to be treated as having been lodged —
 - (a) on the day of transmission, if —
 - (i) that is on a day on which the office of the Registrar is open to the public for the transaction of business; and
 - (ii) every document sent is generated by 5.00 p.m. on that day on a facsimile machine in the office of the Registrar;
 - or
 - (b) otherwise on the next day on which the office of the Registrar is open to the public for the transaction of business.

- (3) Subregulation (2) does not apply if the Registrar is of the opinion that —
- (a) the whole of every document was not received; or
 - (b) any part of a document is not legible.

52. Electronic data transmission

- (1) The documents may be sent to the office of the Registrar by electronic data transmission in accordance with Schedule 1 and the provisions of that Schedule apply in respect of a document so sent.
- (2) If so sent, the documents are to be treated as having been lodged —
- (a) on the day of sending, if —
 - (i) that is on a day on which the office of the Registrar is open to the public for the transaction of business; and
 - (ii) by 5.00 p.m. on that day the documents become capable of being printed as mentioned in Schedule 1 clause 1(d);
 - or
 - (b) otherwise on the next day on which the office of the Registrar is open to the public for the transaction of business.

Part 6 — Section 97XT of the Act: restrictions on inspection of register

53. Registrar to be satisfied of reason for inspection

Before the Registrar allows a person to inspect the register kept under section 97XT of the Act he or she must be satisfied that the person has a good and sufficient reason for doing so.

54. Protected information

- (1) Section 97XT(4) does not include the inspection of protected information that is recorded in the register kept under that section.
- (2) In subregulation (1) —
protected information means —
 - (a) the address of a person who is or has been a represented person or a representative;
 - (b) a certificate referred to in section 97WW(3) of the Act; and
 - (c) any information relating to the disability, medical condition or medical history of a person who is or has been a represented person.

**Schedule 1 — Filing or lodgment of documents by
electronic data transmission**

[r. 21, 52]

1. Requirements for electronic data transmission

A document may be sent to the office of the Registrar by electronic data transmission if —

- (a) it is sent —
 - (i) to an email address approved by the Registrar; or
 - (ii) in the case of a document in an existing proceeding, it is sent to an email address approved by the Registrar for that proceeding;
- (b) it is in an electronic format approved by the Registrar for the acceptance of electronic documents at the office of the Registrar;
- (c) to the extent practicable, it is in a form that complies with regulation 46;
- (d) it is capable of being printed in the office of the Registrar in its entirety, including any signatures; and
- (e) it is accompanied by a cover sheet, clearly stating —
 - (i) the sender's name, postal address and telephone number;
 - (ii) if applicable, the sender's document exchange number, facsimile number and email address; and
 - (iii) the processing of the document required.

2. Documents required for service

- (1) If a document is required to be stamped for service by a party, and it is accepted at the office of the Registrar, the Registrar must —
 - (a) make one copy of the document for that purpose;
 - (b) if the sender requests that the document be held for collection, hold it for collection for 7 days; and

- (c) 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 —
 - (i) by electronic data transmission to the email address stated on the cover sheet; or
 - (ii) if there is no email address stated, to the postal address stated on the cover sheet.
- (2) If more than one copy is required for issue, the sender of the document must send, or ask the Registrar to make, any additional copies required.

3. Paper copy of document to be kept

- (1) A person who sends a document to the office of the Registrar by electronic data transmission must —
 - (a) keep a paper copy of the document; and
 - (b) produce the paper copy of the document as directed by the Registrar.
- (2) If the Registrar directs that the paper copy of the document be produced, the first page must be endorsed with —
 - (a) a statement that the paper copy is a true copy of the document sent by electronic data transmission; and
 - (b) the date that the document was sent by electronic data transmission.

Schedule 2 — Requirements for contents of approved forms

[r. 25(2), 30(2), 35(3), 42, 45]

1. Form of referral to a relevant industrial authority

The form of referral under regulation 25(1) is to provide for —

- (a) a referral to be made by one of the parties or by the parties jointly; and
- (b) the giving of information as to —
 - (i) the provision or provisions of the EEA under which the dispute has arisen; and
 - (ii) the nature of the dispute.

2. Form of statement of service

The form of statement of service under regulation 30 is to provide for the giving of information as to —

- (a) the name of the party or agent served;
- (b) the method of service; and
- (c) as the case may require —
 - (i) the postal address, email address or facsimile number to which the document was sent; or
 - (ii) the place at which service was effected.

3. Form for lodgment of order or determination of arbitrator

The lodgment form under regulation 35 is to provide for —

- (a) the lodgment of a signed copy of the order or determination;
- (b) the giving of information to identify the employer, the employee and the arbitrator;
- (c) if regulation 36 applies, the reason why the order or determination is not lodged by the arbitrator.

4. Form for lodgment of EEA for registration

The lodgment form under regulation 42(a) is to provide for —

- (a) the lodgment of a signed copy of the EEA; and

- (b) the date of execution of the EEA to be stated.

5. Form of employer's statement

- (1) The form of employer's statement under regulation 42(b) is to comply with this clause.

- (2) The form is to provide for the giving of information relating to —

- (a) the employer;
- (b) the employer's business;
- (c) the employee; and
- (d) the employee's conditions of employment,

so far as the information is relevant to the registration of the EEA, including without limitation the determination of the question whether the EEA passes the no-disadvantage test.

- (3) The form is to require the employer to make statements in relation to him or her to the effect set out in Schedule 4 clause 1(1)(g), (h), (i), (j) and (k) of the Act.

- (4) The form is to require the employer —

- (a) to specify what documents, or where permitted summaries of documents, were given for the purposes of section 97UG(1) of the Act; and
- (b) to state that section 97UG(4) of the Act was complied with.

- (5) The form is to provide for the employer to give information to show that the EEA satisfies Schedule 4 clause 1(1)(a) and (b) of the Act.

- (6) The form is to provide for the employer —

- (a) to specify any award or relevant order that was applied for the purposes of the no-disadvantage test; and
- (b) to identify any application made by the employer under section 97VT of the Act.

- (7) The form is to provide for information to be given in relation to any bargaining agent of the employer.

cl. 6

- (8) The form may provide for the giving of other information relevant to the registration of the EEA, including without limitation the determination of the question whether the EEA passes the no-disadvantage test.

6. Form of employee's statement

- (1) The form of employee's statement under regulation 42(c) or 42(d) is to comply with this clause.
- (2) The form is to provide for the giving of information relating to —
- (a) the employee;
 - (b) the employee's conditions of employment; and
 - (c) in the case of the form under regulation 42(d), the representative,

so far as the information is relevant to the registration of the EEA, including without limitation the determination of the question whether the EEA passes the no-disadvantage test.

- (3) The form is to require —
- (a) the employee to make a statement in relation to him or her to the effect set out in Schedule 4 clause 1(1)(g), (h), (i), (j) and (k) of the Act; or
 - (b) in the case of the form under regulation 42(d), the representative to make any such statement so far as is required for the purposes of Schedule 4 of the Act.
- (4) The form is to require the employee or, in the case of the form under regulation 42(d), the representative —
- (a) to specify what documents, or where permitted summaries of documents, were given for the purposes of section 97UG(1) of the Act;
 - (b) to state that section 97UG(4) of the Act was complied with; and
 - (c) to show whether section 97UM of the Act applies to the EEA and if so that the EEA satisfies Schedule 4 clause 1(1)(c) of the Act.

- (5) The form is to provide for information to be given in relation to any bargaining agent of the employee.
- (6) The form may provide for the giving of other information relevant to the registration of the EEA, including without limitation the determination of the question whether the EEA passes the no-disadvantage test.

7. Form for lodgment of revised EEA under section 97VE of the Act

The lodgment form under regulation 45(3)(a) is to provide for —

- (a) the lodgment of a signed copy of the revised EEA by the parties;
- (b) the date of execution of the revised EEA to be stated;
- (c) the notice given by the Registrar under section 97VD to be identified; and
- (d) a statement of the manner in which the revised EEA differs from the original EEA.

8. Form for lodgment of revised EEA under section 97VO of the Act

The lodgment form under regulation 45(3)(b) is to provide for —

- (a) the lodgment of a signed copy of the revised EEA by the parties;
- (b) the date of execution of the revised EEA to be stated;
- (c) the notice given by the relevant industrial authority under section 97VN to be identified; and
- (d) a statement of the manner in which the revised EEA differs from the EEA to which the appeal relates.

Schedule 3 — Model EEA dispute provisions

[r. 33, 41]

Division 1 — Model provisions where —

- **a relevant industrial authority is not the arbitrator of disputes; and**
- **the employee is not a represented person**

Note: Part VID Division 8 of the Act contains provisions relating to disputes under an EEA that apply regardless of the provisions of the EEA.

Subdivision 1 — Preliminary

1. Definitions

In these provisions —

dispute means a question, dispute or difficulty that arises out of or in the course of employment under the EEA;

dispute notice means a notice under clause 4;

notice of a proposed arbitrator means a notice under clause 9(2).

2. Joint arbitrations not affected

These provisions, or any agreement or referral made under these provisions, do not affect section 97WL of the Act (which relates to 2 or more employees of the same employer agreeing to their disputes being dealt with in one arbitration).

3. Commercial Arbitration Act 1985 not applicable

The *Commercial Arbitration Act 1985* does not apply to the arbitration of a dispute.

Subdivision 2 — Notice of dispute, and duty to attempt settlement

4. Notice of dispute

If the employer or the employee considers that a dispute has arisen, he or she may give a written notice to the other party —

- (a) stating that fact; and
- (b) setting out a brief description of the dispute.

5. Withdrawal of notice

The employer or the employee may at any time withdraw a dispute notice by giving written notice of the withdrawal —

- (a) to the other party; and
- (b) if the dispute has been referred for arbitration, to the arbitrator.

6. Parties must try to settle dispute

- (1) If a dispute notice has been given, the employer and the employee must confer together and make a genuine attempt to settle the dispute within the period of 42 days from the day on which the dispute notice was given.
- (2) Initially this may be done by discussion between the employee and the employee's immediate supervisor.
- (3) However —
 - (a) if the dispute is not settled in those discussions; and
 - (b) there is a person in a management position above the immediate supervisor,

that person must have discussions with the employee and they must attempt to settle the dispute.

7. Settlement agreement

If —

- (a) a dispute notice has been given; and
- (b) the parties settle the dispute by agreement,

the terms of the settlement must be recorded in a written agreement that is signed by both parties.

Subdivision 3 — Appointment of arbitrator

8. Arbitrator specified

The arbitrator of any dispute is to be

.....

cl. 9

.....
(insert name, address and occupation of arbitrator)

or if he or she is for any cause unable to act the arbitrator is to be

.....
(insert name, address and occupation of alternative arbitrator)

Note: Instead of a named person, the holder of a designated office could be inserted.

9. Appointment by agreement

- (1) This clause only applies if the EEA does not name or designate any arbitrator of disputes.
- (2) If a dispute notice has been given, the employer or the employee may give to the other party notice of a proposed arbitrator.
- (3) Once a notice of a proposed arbitrator has been given in relation to a dispute, subclause (2) ceases to apply to that dispute so that neither party can give another notice under that subclause.
- (4) Except where subclause (5)(b) applies, the parties must agree on and appoint an arbitrator within 7 days after the notice of a proposed arbitrator was given.
- (5) If notice of a proposed arbitrator —
 - (a) has not been given; or
 - (b) has been given later than 35 days after the dispute notice was given,

the parties must agree on and appoint an arbitrator within 42 days after the dispute notice was given.

- (6) A notice under subclause (2) may either —
 - (a) name a person that the party wishes to act; or
 - (b) give the names of several persons one of whom the party wishes to act,

as arbitrator of the dispute.

10. Default appointment

- (1) If this subclause applies, the arbitrator is to be a person appointed by

.....
(designate an independent office-holder)

Note: For example, the designated office-holder could be the chairperson for the time being of the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia.

- (2) Subclause (1) applies if the employer and the employee have not appointed an arbitrator within 7 days after notice of a proposed arbitrator has been given.
- (3) Subclause (1) also applies if —
- (a) notice of a proposed arbitrator —
 - (i) has not been given; or
 - (ii) has been given later than 35 days after the dispute notice was given;
 - and
 - (b) the employer and the employee have not appointed an arbitrator within 42 days after the dispute notice was given.
- (4) Subclause (1) also applies if —
- (a) the arbitrator of disputes is named or designated in these provisions; but
 - (b) at the end of the 42nd day after the dispute notice was given no arbitrator so named or designated is available and willing to act.
- (5) Subclause (1) also applies if —
- (a) a dispute has been referred for arbitration;
 - (b) the arbitrator dies or becomes incapable of conducting the arbitration; and
 - (c) the employer and the employee have not agreed on and made a new appointment as provided by clause 11(3).
- (6) If an arbitrator appointed under subclause (1), before he or she enters the arbitration —
- (a) dies;

cl. 11

- (b) becomes incapable of conducting the arbitration; or
- (c) is unavailable or unwilling to act,

a further appointment is to be made under that subclause.

11. Appointment of substitute arbitrator

- (1) This clause applies if —
 - (a) a dispute has been referred for arbitration; and
 - (b) an arbitrator —
 - (i) named or designated in these provisions; or
 - (ii) appointed by the parties,before he or she has entered on the arbitration —
 - (iii) dies;
 - (iv) becomes incapable of conducting the arbitration; or
 - (v) is unavailable or unwilling to act.
- (2) This clause also applies if —
 - (a) a dispute has been referred for arbitration; and
 - (b) after the arbitrator has entered on the arbitration, he or she dies or becomes incapable of completing the arbitration.
- (3) The employer and the employee may, within 14 days after they have both received notice of the death or other occurrence mentioned in subclause (1)(b), agree on who is to act as the new arbitrator of the dispute and make an appointment accordingly.
- (4) On the appointment of a new arbitrator under this clause in place of an arbitrator who has entered on the arbitration, the new arbitrator is to enter on the arbitration afresh except to the extent that the parties agree otherwise.

Subdivision 4 — Referral for arbitration

12. Referral available only if there is an arbitrator

A dispute may be referred for arbitration only if —

- (a) an arbitrator named or designated in these provisions is available and willing to act; or

- (b) an arbitrator has been appointed under clause 9 or 10.

13. Joint referral at any time

The employer and the employee may at any time jointly refer a dispute for arbitration if they have made a genuine attempt to settle it but have failed to do so.

14. Referral to arbitration within 42 days after notice given

Either the employer or the employee may refer a dispute for arbitration if —

- (a) it is not settled by agreement; and
- (b) the terms of the settlement are not recorded as required by clause 7,

within 42 days from the day on which the dispute notice was given.

15. How referral made

- (1) A dispute is referred for arbitration by the giving of notice in writing to the arbitrator that the dispute is referred.
- (2) A notice under subclause (1) must —
 - (a) state the nature of the dispute; and
 - (b) be accompanied by a copy of the EEA.
- (3) If the referral is made by one of the parties, the referring party must give a copy of the notice to the other party.

Subdivision 5 — Arbitration proceedings

Note: Powers are also conferred on an arbitrator by section 97WM of the Act.

16. Hearings

- (1) An arbitration hearing is to be in private.
- (2) An arbitrator may give directions as to the persons who may be present at a hearing.
- (3) An arbitrator may determine that a hearing is to be conducted by —
 - (a) telephone;

cl. 17

- (b) closed circuit television; or
- (c) any other means of communication.

17. Proceedings to be informal and speedy

An arbitrator —

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as the proper consideration of the dispute allows.

18. Absence of party

An arbitrator may hear and determine a dispute in the absence of a party who has been given notice of the hearing.

19. General power of arbitrator as to proceedings

Subject to these provisions, an arbitrator may —

- (a) give directions as to any matter of procedure;
- (b) give any direction that in his opinion may assist in clarifying the issues in dispute between the parties; and
- (c) otherwise conduct proceedings in such manner as he or she thinks fit.

Subdivision 6 — Costs of arbitration

20. Arbitrator's services

(1) The cost of the services of an arbitrator is to be borne —

- (a) by the employee, as to —
 - (i) one half; or
 - (ii) the maximum amount, whichever is the lesser; and
- (b) as to the balance, by the employer.

(2) In this clause —

maximum amount means the amount for all employees average weekly total earnings in Western Australia last published by the

Australian Statistician before the day on which the dispute was referred to the arbitrator.

Note: This clause would not apply where, under section 97WL of the Act 2 or more employees are involved in an arbitration.

21. Costs of representation

An employer or an employee is to bear his or her own costs of representation in arbitration proceedings.

Division 2 — Model provisions where —

- **a relevant industrial authority is not the arbitrator of disputes; and**
- **the employee is a represented person**

Note: Part VID Division 8 of the Act contains provisions relating to disputes under an EEA that apply regardless of the provisions of the EEA.

Subdivision 1 — Preliminary

1. Definitions

In these provisions —

dispute means a question, dispute or difficulty that arises out of or in the course of employment under the EEA;

dispute notice means a notice under clause 4;

party includes a representative where the context so requires;

notice of a proposed arbitrator means a notice under clause 9(2).

2. Joint arbitrations not affected

These provisions, or any agreement or referral made under these provisions, do not affect section 97WL of the Act (which relates to 2 or more employees of the same employer agreeing to their disputes being dealt with in one arbitration).

3. Commercial Arbitration Act 1985 not applicable

The *Commercial Arbitration Act 1985* does not apply to the arbitration of a dispute.

cl. 4

Subdivision 2 — Notice of dispute, and duty to attempt settlement

4. Notice of dispute

If the employer, the employee or the representative considers that a dispute has arisen, he or she may give a written notice —

- (a) stating that fact; and
- (b) setting out a brief description of the dispute,

to the employee and his or her representative or to the employer, as the case may require.

5. Withdrawal of notice

- (1) A dispute notice may be withdrawn at any time by the giving of written notice of withdrawal —
 - (a) to each person to whom the dispute notice was given; and
 - (b) if the dispute has been referred for arbitration, to the arbitrator.
- (2) A notice of withdrawal is to be given by the person who gave the notice of dispute, but if it was given by the employee any notice of withdrawal is to be given by the representative.

6. Parties must try to settle dispute

- (1) If a dispute notice has been given, the employer, the employee and the representative must confer together and make a genuine attempt to settle the dispute within the period of 42 days from the day on which the dispute notice was given.
- (2) Initially this may be done by discussion between the employee, the representative and the employee's immediate supervisor.
- (3) However —
 - (a) if the dispute is not settled in those discussions; and
 - (b) there is a person in a management position above the immediate supervisor,

that person must have discussions with the employee and the representative and they must attempt to settle the dispute.

7. Settlement agreement

If —

- (a) a dispute notice has been given; and
- (b) the employer, the employee and the representative settle the dispute by agreement,

the terms of the settlement must be recorded in a written agreement that is signed by the employer and the representative.

Subdivision 3 — Appointment of arbitrator

8. Named arbitrator

The arbitrator of any dispute is to be

.....

.....
(insert name, address and occupation of arbitrator)

or if he or she is for any cause unable to act the arbitrator is to be

.....

.....
(insert name, address and occupation of alternative arbitrator)

Note: Instead of a named person, the holder of a designated office could be inserted.

9. Appointment by agreement

- (1) This clause only applies if the EEA does not name or designate any arbitrator of disputes.
- (2) If a dispute notice has been given, the employer or the representative may give to the other party notice of a proposed arbitrator.
- (3) Once a notice of a proposed arbitrator has been given in relation to a dispute, subclause (2) ceases to apply to that dispute so that neither the employer nor the representative can give another notice under that subclause.

cl. 10

- (4) Except where subclause (5)(b) applies, the employer and the representative must agree on and appoint an arbitrator within 7 days after the notice of a proposed arbitrator was given.
- (5) If notice of a proposed arbitrator —
 - (a) has not been given; or
 - (b) has been given later than 35 days after the dispute notice was given,the employer and the representative must agree on and appoint an arbitrator within 42 days after the dispute notice was given.
- (6) A notice under subclause (2) may either —
 - (a) name a person that the party wishes to act; or
 - (b) give the names of several persons one of whom the party wishes to act,as arbitrator of the dispute.

10. Default appointment

- (1) If this subclause applies, the arbitrator is to be a person appointed by

.....
(designate an independent office-holder)

Note: For example, the designated office-holder could be the chairperson for the time being of the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia.

- (2) Subclause (1) applies if the employer and the representative have not appointed an arbitrator within 7 days after notice of a proposed arbitrator has been given.
- (3) Subclause (1) also applies if —
 - (a) notice of a proposed arbitrator —
 - (i) has not been given; or
 - (ii) has been given later than 35 days after the dispute notice was given;and
 - (b) the employer and the representative have not appointed an arbitrator within 42 days after the dispute notice was given.

- (4) Subclause (1) also applies if —
 - (a) the arbitrator of disputes is named or designated in these provisions; but
 - (b) at the end of the 42nd day after the dispute notice was given no arbitrator so named or designated is available and willing to act.
- (5) Subclause (1) also applies if —
 - (a) a dispute has been referred for arbitration;
 - (b) the arbitrator dies or becomes incapable of conducting the arbitration; and
 - (c) the employer and the representative have not agreed on and made a new appointment as provided by clause 11(3).
- (6) If an arbitrator appointed under subclause (1), before he or she enters the arbitration —
 - (a) dies;
 - (b) becomes incapable of conducting the arbitration; or
 - (c) is unavailable or unwilling to act,a further appointment is to be made under that subclause.

11. Appointment of substitute arbitrator

- (1) This clause applies if —
 - (a) a dispute has been referred for arbitration; and
 - (b) an arbitrator —
 - (i) named or designated in these provisions; or
 - (ii) appointed by the parties,before he or she has entered on the arbitration —
 - (iii) dies;
 - (iv) becomes incapable of conducting the arbitration; or
 - (v) is unavailable or unwilling to act.
- (2) This clause also applies if —
 - (a) a dispute has been referred for arbitration; and

cl. 12

- (b) after the arbitrator has entered on the arbitration, he or she dies or becomes incapable of completing the arbitration.
- (3) The employer and the representative may, within 14 days after they have both received notice of the death or other occurrence mentioned in subclause (b), agree on who is to act as the new arbitrator of the dispute and make an appointment accordingly.
- (4) On the appointment of a new arbitrator under this clause in place of an arbitrator who has entered on the arbitration, the new arbitrator is to enter on the arbitration afresh except to the extent that the parties agree otherwise.

Subdivision 4 — Referral for arbitration

12. Referral available only if there is an arbitrator

A dispute may be referred for arbitration only if —

- (a) an arbitrator named or designated in these provisions is available and willing to act; or
- (b) an arbitrator has been appointed under clause 9 or 10.

13. Joint referral at any time

The employer and the representative may at any time jointly refer a dispute for arbitration if they have made a genuine attempt to settle it but have failed to do so.

14. Referral to arbitration within 42 days after notice given

Either the employer or the representative may refer a dispute for arbitration if —

- (a) it is not settled by agreement; and
- (b) the terms of the settlement are not recorded as required by clause 7,

within 42 days from the day on which the dispute notice was given.

15. How referral made

- (1) A dispute is referred for arbitration by the giving of notice in writing to the arbitrator that the dispute is referred.

- (2) A notice under subclause (1) must —
 - (a) state the nature of the dispute; and
 - (b) be accompanied by a copy of the EEA.
- (3) If the referral is made by one of the parties, the referring party must give a copy of the notice to the employer or the representative, as the case may be.

Subdivision 5 — Arbitration proceedings

Note: Powers are also conferred on an arbitrator by section 97WM of the Act.

16. Hearings

- (1) An arbitration hearing is to be in private.
- (2) An arbitrator may give directions as to the persons who may be present at a hearing.
- (3) An arbitrator may determine that a hearing is to be conducted by —
 - (a) telephone;
 - (b) closed circuit television; or
 - (c) any other means of communication.

17. Proceedings to be informal and speedy

An arbitrator —

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as the proper consideration of the dispute allows.

18. Absence of party

An arbitrator may hear and determine a dispute in the absence of the employer, the employee or the representative if he or she has been given notice of the hearing.

19. General power of arbitrator as to proceedings

Subject to these provisions, an arbitrator may —

- (a) give directions as to any matter of procedure;

cl. 20

- (b) give any direction that in his opinion may assist in clarifying the issues in dispute between the parties; and
- (c) otherwise conduct proceedings in such manner as he or she thinks fit.

Subdivision 6 — Costs of arbitration

20. Arbitrator's services

- (1) The cost of the services of an arbitrator is to be borne —
 - (a) by the representative, as to —
 - (i) one half; or
 - (ii) the maximum amount,
whichever is the lesser; and
 - (b) as to the balance, by the employer.

- (2) In this clause —

maximum amount means the amount for all employees average weekly total earnings in Western Australia last published by the Australian Statistician before the day on which the dispute was referred to the arbitrator.

Note: This clause would not apply where, under section 97WL of the Act 2 or more employees are involved in an arbitration.

21. Costs of representation

An employer, an employee or a representative is to bear his or her own costs of representation in arbitration proceedings.

Division 3 — Model provisions where —

- **a relevant industrial authority is the arbitrator of disputes; and**
- **the employee is not a represented person**

Note: Part VID Division 8 of the Act contains provisions relating to disputes under an EEA that apply regardless of the provisions of the EEA.

Subdivision 1 — Preliminary

1. Definitions

In these provisions —

dispute means a question, dispute or difficulty that arises out of or in the course of employment under the EEA;

dispute notice means a notice under clause 4;

relevant industrial authority means the

.....
(specify the relevant authority by name)

2. Joint arbitrations not affected

These provisions, or any agreement or referral made under these provisions, do not affect section 97WL of the Act (which relates to 2 or more employees of the same employer agreeing to their disputes being dealt with in one arbitration).

3. Commercial Arbitration Act 1985 not applicable

The *Commercial Arbitration Act 1985* does not apply to the arbitration of a dispute.

Subdivision 2 — Notice of dispute, and duty to attempt settlement

4. Notice of dispute

If the employer or the employee considers that a dispute has arisen, he or she may give a written notice to the other party —

- (a) stating that fact; and
- (b) setting out a brief description of the dispute.

5. Withdrawal of notice

The employer or the employee may at any time withdraw a dispute notice by giving written notice of the withdrawal —

- (a) to the other party; and
- (b) if the dispute has been referred for arbitration, to the relevant industrial authority.

cl. 21

6. Parties must try to settle dispute

- (1) If a dispute notice has been given, the employer and the employee must confer together and make a genuine attempt to settle the dispute within the period of 42 days from the day on which the dispute notice was given.
- (2) Initially this may be done by discussion between the employee and the employee's immediate supervisor.
- (3) However —
 - (a) if the dispute is not settled in those discussions; and
 - (b) there is a person in a management position above the immediate supervisor,

that person must have discussions with the employee and they must attempt to settle the dispute.

7. Settlement agreement

If —

- (a) a dispute notice has been given; and
- (b) the parties settle the dispute by agreement,

the terms of the settlement must be recorded in a written agreement that is signed by both parties.

Subdivision 3 — Referral for arbitration

8. Joint referral at any time

The employer and the employee may at any time jointly refer a dispute for arbitration by the relevant industrial authority if they have made a genuine attempt to settle it but have failed to do so.

9. Referral to arbitration within 42 days after notice given

Either the employer or the employee may refer a dispute for arbitration by the relevant industrial authority if —

- (a) it is not settled by agreement; and
- (b) the terms of the settlement are not recorded as required by clause 7,

within 42 days from the day on which the dispute notice was given.

10. How referral to be made

A referral is to be made in accordance with regulation 25 of the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

Subdivision 4 — Arbitration proceedings

Note: Powers are also conferred on a relevant industrial authority by section 97WM of the Act.

11. Hearings

- (1) An arbitration hearing is to be in private.
- (2) The relevant industrial authority may give directions as to the persons who may be present at a hearing.
- (3) The relevant industrial authority may determine that a hearing is to be conducted by —
 - (a) telephone;
 - (b) closed circuit television; or
 - (c) any other means of communication.

12. Proceedings to be informal and speedy

The relevant industrial authority —

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as the proper consideration of the dispute allows.

13. Absence of party

The relevant industrial authority may hear and determine a dispute in the absence of a party who has been given notice of the hearing.

14. General powers as to proceedings

- (1) The relevant industrial authority may —
 - (a) give directions as to any matter of procedure;

cl. 21

- (b) give any direction that in the opinion of the authority may assist in clarifying the issues in dispute between the parties; and
 - (c) otherwise conduct proceedings in such manner as the authority thinks fit.
- (2) Subclause (1) is subject to —
- (a) these provisions; and
 - (b) Part 3 Division 2 of the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

Division 4 — Model provisions where —

- **a relevant industrial authority is the arbitrator of disputes; and**
- **the employee is a represented person**

Note: Part VID Division 8 of the Act contains provisions relating to disputes under an EEA that apply regardless of the provisions of the EEA.

Subdivision 1 — Preliminary

1. Definitions

In these provisions —

dispute means a question, dispute or difficulty that arises out of or in the course of employment under the EEA;

dispute notice means a notice under clause 4;

relevant industrial authority means the

.....
(specify the relevant authority by name)

2. Joint arbitrations not affected

These provisions, or any agreement or referral made under these provisions, do not affect section 97WL of the Act (which relates to 2 or more employees of the same employer agreeing to their disputes being dealt with in one arbitration).

3. *Commercial Arbitration Act 1985 not applicable*

The *Commercial Arbitration Act 1985* does not apply to the arbitration of a dispute.

Subdivision 2 — Notice of dispute, and duty to attempt settlement

4. **Notice of dispute**

If the employer, the employee or the representative considers that a dispute has arisen, he or she may give a written notice to the other party —

- (a) stating that fact; and
- (b) setting out a brief description of the dispute,

to the employee and his or her representative or to the employer, as the case may require.

5. **Withdrawal of notice**

- (1) A dispute notice may be withdrawn at any time by the giving of written notice of withdrawal —
 - (a) to each person to whom the dispute notice was given; and
 - (b) if the dispute has been referred for arbitration, to the relevant industrial authority.
- (2) A notice of withdrawal is to be given by the person who gave the dispute notice, but if it was given by the employee any notice of withdrawal is to be given by the representative.

6. **Parties must try to settle dispute**

- (1) If a dispute notice has been given, the employer, the employee and the representative must confer together and make a genuine attempt to settle the dispute within the period of 42 days from the day on which the dispute notice was given.
- (2) Initially this may be done by discussion between the employee, the representative and the employee's immediate supervisor.
- (3) However —
 - (a) if the dispute is not settled in those discussions; and

cl. 21

- (b) there is a person in a management position above the immediate supervisor,

that person must have discussions with the employee and the representative and they must attempt to settle the dispute.

7. Settlement agreement

If —

- (a) a dispute notice has been given; and
- (b) the employer, the employee and the representative settle the dispute by agreement,

the terms of the settlement must be recorded in a written agreement that is signed by the employer and the representative.

Subdivision 3 — Referral for arbitration

8. Joint referral at any time

The employer and the representative may at any time jointly refer a dispute for arbitration by the relevant industrial authority if they have made a genuine attempt to settle it but have failed to do so.

9. Referral to arbitration within 42 days after notice given

Either the employer or the representative may refer a dispute for arbitration by the relevant industrial authority if —

- (a) it is not settled by agreement; and
- (b) the terms of the settlement are not recorded as required by clause 7,

within 42 days from the day on which the dispute notice was given.

10. How referral to be made

A referral is to be made in accordance with regulation 25 of the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

Subdivision 4 — Arbitration proceedings

Note: Powers are also conferred on a relevant industrial authority by section 97WM of the Act.

11. Hearings

- (1) An arbitration hearing is to be in private.
- (2) The relevant industrial authority may give directions as to the persons who may be present at a hearing.
- (3) The relevant industrial authority may determine that a hearing is to be conducted by —
 - (a) telephone;
 - (b) closed circuit television; or
 - (c) any other means of communication.

12. Proceedings to be informal and speedy

The relevant industrial authority —

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as the proper consideration of the dispute allows.

13. Absence of party

The relevant industrial authority may hear and determine a dispute in the absence of a party who has been given notice of the hearing.

14. General powers as to proceedings

- (1) The relevant industrial authority may —
 - (a) give directions as to any matter of procedure;
 - (b) give any direction that in the opinion of the authority may assist in clarifying the issues in dispute between the parties; and
 - (c) otherwise conduct proceedings in such manner as the authority thinks fit.
- (2) Subclause (1) is subject to —

cl. 21

- (a) these provisions; and
- (b) Part 3 Division 2 of the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

Notes

- ¹ This is a compilation of the *Industrial Relations (Employer-employee Agreements) Regulations 2002* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Citation	Gazettal	Commencement
<i>Industrial Relations (Employer-employee Agreements) Regulations 2002</i>	6 Sep 2002 p. 4525-90	15 Sep 2002 (see r. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 18</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

- ^{1a} 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

Citation	Gazettal	Commencement
<i>Industrial Relations (Employer-employee Agreements) Amendment Regulations 2013 r. 3-4</i> ²	19 Jul 2013 p. 3266-7	On commencement of the <i>Commercial Arbitration Act 2012</i> s. 44 (see r. 2(b))

- ² On the date as at which this compilation was prepared, the *Industrial Relations (Employer-employee Agreements) Amendment Regulations 2013 r. 3-4* had not come into operation. They read as follows:

3. Regulations amended

These regulations amend the *Industrial Relations (Employer-employee Agreements) Regulations 2002*.

4. Schedule 3 amended

In the provisions listed in the Table delete “*Commercial Arbitration Act 1985*” and insert:

Commercial Arbitration Act 2012

Table

Sch. 3 Div. 1 Subdiv. 1 cl. 3	Sch. 3 Div. 2 Subdiv. 1 cl. 3
Sch. 3 Div. 3 Subdiv. 1 cl. 3	Sch. 3 Div. 4 Subdiv. 1 cl. 3

Note: The headings to the amended clauses listed in the Table are to read as set out in the Table.

Table

Amended provision	Clause heading
Sch. 3 Div. 1 Subdiv. 1 cl. 3	<i>Commercial Arbitration Act 2012 not applicable</i>
Sch. 3 Div. 2 Subdiv. 1 cl. 3	<i>Commercial Arbitration Act 2012 not applicable</i>
Sch. 3 Div. 3 Subdiv. 1 cl. 3	<i>Commercial Arbitration Act 2012 not applicable</i>
Sch. 3 Div. 4 Subdiv. 1 cl. 3	<i>Commercial Arbitration Act 2012 not applicable</i>