



New South Wales

INDUSTRIAL RELATIONS COMMISSION RULES (AMENDMENT No 1) 1999

under the

Industrial Relations Act 1996

1. These rules were made by the Rules Committee on 18 November 1999.
2. The *Industrial Relations Commission Rules 1996* are amended as follows:

After Rule 18, insert:

18A New procedure under section 106 (Unfair Contracts)

- (1) An application to the Commission to exercise the powers conferred on it by section 106 must be in Form 12A and must:
 - (a) specify in summary the matters of fact and law which form the basis of the application, but not the evidence by which those facts are to be proved; and
 - (b) contain sufficient information to allow the Commission to carry out its duty to conciliate under section 109 by a succinct summary.
- (2) Unless otherwise ordered by the Registrar the application must be served on the respondent.
- (3) Where within the required period of time, an appearance has not been entered by a respondent, the applicant may proceed to have the matter determined in the absence of that respondent.
- (4) Within 21 days after the date of expiry of the time limited for the respondent's appearance the respondent must file and serve its reply. Such reply must be in Form 12B and must:
 - (a) answer each of the matters raised in the application; and

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- (b) specify in summary any additional matters of fact and law upon which the respondent will rely in opposition to the application, but not the evidence by which those facts are to be proved; and
- (c) contain sufficient information to allow the Commission to carry out its duty to conciliate under section 109 by a succinct summary.
- (5) An applicant must within 14 days of the time of filing of the reply file and serve a response answering each of the matters specified in the reply pursuant to subrule (4). Such response must be in Form 12C.
- (6) The applicant or respondent, as appropriate, must file and serve with the application, reply and response an affidavit verifying the matters of fact set out therein. If the relevant party is a corporation the affidavit may be sworn by an officer or employee of the corporation who is able to verify the matters of fact relied upon.
- (7) Nothing in this Rule is to be taken to derogate from or otherwise limit the requirements of or the Commission's powers under Parts 9 and 13 of these Rules.
- (8) The Registrar must, as soon as practicable after the filing or expiration of the time for filing of the response, whichever occurs first, refer the matter for allocation to a Member of the Commission for conciliation in accordance with section 109 or, if the Registrar considers it appropriate, for directions either before the Registrar or a Judge of the Commission.
- (9) This Rule takes effect from 31 January 2000. An application to the Commission to exercise the powers conferred on it by section 106 may be commenced and proceeded with pursuant to either Rule 18 or Rule 18A until 6 October 2000 from which time all such applications are to be commenced and proceeded with in accordance with Rule 18A.

3. The *Industrial Relations Commission Rules 1996* are further amended as follows:

- (a) Rule 250
Omit the word "As" where first appearing and insert instead "In matters commenced in accordance with Rule 18, as".
- (b) Rule 252
Insert the following after Rule 252(2):

- (3) Unless the Commission otherwise directs, where a certificate has been issued pursuant to subrule (1)(b) the directions set out in subrule (4) are to apply.
- (4) **Standard directions for section 106**
Applications made pursuant to Rule 18A. When a certificate has been issued pursuant to Rule 252(1)(b) the following procedure applies:
 - (a) applicant to file affidavits stating the facts, matters and circumstances relied upon in support of the matters summarised in the application and response within 28 days of the date of receipt of the Rule 252(1)(b) Certificate by the applicant unless otherwise ordered; and
 - (b) respondent to file affidavits in answer to the applicant's affidavits within 28 days of the applicant advising the respondent that all affidavits intended to be filed pursuant to paragraph (a) have been filed unless otherwise ordered or agreed between the parties; and
 - (c) applicant to file affidavits in reply within 14 days of the expiration of the time specified in paragraph (b) unless otherwise ordered or agreed between the parties;
 - (d) if the parties agree to vary the time limits specified in paragraphs (b) and (c) both parties must advise the Registrar in writing; and
 - (e) either party to have liberty to apply for variation of, or addition to, these directions at any time up to 14 days from the date of expiration of the time specified or ordered or agreed in paragraph (c); and
 - (f) if either party seeks a further conciliation pursuant to section 109 of the Act that party must exercise the liberty to apply in paragraph (e) to seek appropriate directions from a member of the Commission.
- (5) The standard directions specified in subrule (4) may be varied or replaced by a Practice Direction issued pursuant to Rule 89.

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(c) Schedule 2 Index of Forms

Insert in order in the appropriate columns:

1A	Application - Enterprise Award	14	
12A	Summons for relief under section 106	18A	106
12B	Reply to summons for relief under section 106	18A	106
12C	Response to reply to summons for relief under section 106	18A	106

(d) Schedule 2 Forms 1A, 12A, 12B and 12C

Insert in appropriate order new Forms 1A, 12A, 12B and 12C as follows:

Form 1 A
Application for Making of an Enterprise Award

**BEFORE THE INDUSTRIAL RELATIONS COMMISSION
 OF NEW SOUTH WALES**

No. IRC **of**

*(Add Title as required by
 Schedule 1)*

**APPLICATION
 For Making of an
 Enterprise Award**

Filed by *(Name of person,
 corporation, organisation
 or other body filing the
 document)*

Contact name *(Name of
 person conducting the
 matter)*

Address

Telephone

Facsimile

DX

*(and if solicitors or agents
 are acting, add)
 by their agents*

Name

Address

Telephone

Facsimile

DX

A. The applicant claims:

1. {
 (state the nature of the claim or relief sought)etc,
 2. {

*e.g. an award, variation or rescission of an award, etc, as the
 case may be.*

B. under:

*(state the section and name of the Act under which the Application is
 brought)*

C. in the following terms: *(or, in terms stated in the attached
 schedule, as the case may be)*

D. Award affected: *(state the name of the award, if any,
 affected)*

E. Grounds and reasons:

F. Particulars:

1. {
 state briefly but specifically the matters, etc, on which reliance
 2. {
 will be placed.

G. Applicant:

1. **Name**
(state full name of applicant).
2. **Capacity in which applicant applies**
(e.g. as an industrial organisation, etc, as the case may be).
3. **Address** *(if corporation, registered office).*
4. **Solicitor or agent** *(if any).*
5. **Address for service.**

H. Respondents:

(Name and address of those respondent to the application).

OR, as appropriate

I. The persons *(including corporations, organisations, etc)* **who are interested in or may be affected by the application** *(other than those included in the record maintained by the registrar pursuant to Rule 40(c)) are:*
(state the names and addresses of such persons (if any) the applicant believes are so affected).

(signature)

*(Capacity in which signed, e.g. applicant, respondent,
 Industrial Registrar).*

Dated: *(date)*

continued

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Form 1A *continued*

TO THE RESPONDENT(S):

(name each party affected by the application).

IMPORTANT NOTICE:

- (1) The respondent is *(and/or, in an award application or where appropriate, or any other person interested in or affected who desires to take part in the proceeding are)* required, under the Rules of the Industrial Relations Commission, to file a notice of appearance at the Industrial Registry *(address and telephone number)* within 7 days of service of this notice *(or as the case may be)* on you.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this notice or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will be subsequently advised of the date time and place when the Commission will hear this application. Any enquiries should be made to the Industrial Relations Commission List Clerk, telephone *(number)*.

*(where the time for service has been abridged, add
The time before which this notice *(or as the case may be)* is to be served has been
abridged by the Commission to 5.00 pm on (date)).*

(Add, where necessary, form of Appointment for Hearing)

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Form 1A *continued*

**STATEMENT OF PARTICULARS
APPLICATIONS FOR NEW OR VARIED ENTERPRISE AWARDS ONLY**

(1) *(For statistical purposes only. An estimate is acceptable)*

- (a) How many employees will be covered by the Enterprise Award?
- (b) What percentage of employees covered by the Enterprise Award is female?
- (c) What percentage of employees covered by the Enterprise Award is a Non English Speaking background?

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Form 12A continued

TO THE RESPONDENT(S):

(name each party affected by the application)

IMPORTANT NOTICE:

- (1) You are required in accordance with Rules 75 to 79 of the Industrial Relations Commission Rules 1996 to file a Notice of Appearance with the Industrial Registrar within 7 days of the service of this Summons on you.
- (2) You are required, under the Rules of the Industrial Relations Commission, to file a Reply according to Form 12B of the Rules at the Industrial Registry (*address and telephone number*) within 28 days of service of this notice on you unless you obtain the consent of the applicant to an extension of such time limit or unless you make an application to the Registrar and such requirement is varied.
- (3) If you do not file a Reply the proceedings may be heard in your absence and an order may be made against you.
- (4) The parties will be subsequently advised of the date time and place when the Commission will hear this application. Any enquiries should be made to the Industrial Relations Commission List Clerk, telephone (*number*).

(where the time for service has been abridged, add

The time before which this notice (*or as the case may be*) is to be served has been abridged by the Commission to 5.00pm on (*date*).

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Form 12C
Response to Respondent's Reply (Rule 18A(5)) under section 106 (Unfair Contract)

**BEFORE THE INDUSTRIAL RELATIONS
COMMISSION
OF NEW SOUTH WALES IN COURT SESSION**

or as required by Schedule 1

No. IRC **of**
*(Add Title as required by
Schedule 1)*

Applicant

v
Respondent

**RESPONSE TO REPLY TO
SUMMONS FOR RELIEF
Under Section 106**

Filed by *(Name of person,
corporation, organisation or
other body filing the document)*

Contact name *(Name of person
conducting the matter)*

Address

Telephone
Facsimile
DX

*(and if solicitors or agents are
acting, add by their agents)*

Name

Address

Telephone
Facsimile

A. The applicant
(name, address and occupation)

responds to each of the matters specified in the
reply filed by the respondent
(name of respondent, if more than one)

in the following terms:

**B. Summary of matters of fact and law in
response to the reply to the application**
(Pursuant to rule 18A(5) the response must:

*(a) answer each of the matters raised in the reply;
and*

*(b) specify in summary any additional matters of
fact and law upon which the applicant will rely
in opposition to the reply but not the evidence by
which these facts are to be proved. Such
summary must contain sufficient information to
allow the Commission to carry out its duty to
conciliate under section 109 but shall be a
succinct summary.)*

.....
(Signature)
*(Capacity in which signed, eg applicant,
applicant's solicitor)*

Dated: *(date)*

(e) Schedule 2 Forms 14

Omit the form and insert instead –

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Form 14 continued

TO THE PARTIES:

(name each party to the agreement).

- (1) Application has been made to the Commission for approval of the attached enterprise agreement. You are listed as a party to that agreement. Please ensure that your address and contact details are correct, as these will be used to notify you of the hearing.
- (2) Unless the time, place and date of hearing are endorsed on this application, the parties will be subsequently advised of the date time and place when the Commission will hear this application. Any enquiries should be made to the Industrial Relations Commission List Clerk, telephone *(number)*.

(Add, where necessary, form of Appointment for Hearing)

continued

Form 14 continued

STATEMENT OF PARTICULARS

- (1) The nominal term of the agreement is:
- (2) Does the agreement vary an earlier enterprise agreement? If so
 - (a) What is that agreement number?
 - (b) When does that agreement expire?
- (3) What awards, enterprise agreements, former industrial agreements or other instruments apply to the work covered by the proposed agreement? (*SET OUT NAMES IN FULL*)
- (4) Does the agreement cover:
 - (a) employees of a single employer?
 - (b) employees of two or more associated employers? (if so, give details of association)
 - (c) employees engaged in a project? (if so, give details of the project, including its expected life)
 - (d) public sector employees?
- (5) Does the agreement cover all employees?
- (6) If the agreement is with individual employees:
 - (a) When was notice given to the Industrial Registrar that an agreement was proposed or under negotiation? Give Registration Number, if known.
 - (b) Give details of the secret ballot to approve the agreement, including the date of the ballot, the method of voting, the name and address of the returning officer and the results of the ballot.
- (7) (*For statistical purposes only. An estimate is acceptable*)
 - (a) How many employees will be covered by the Enterprise Agreement?
 - (b) What percentage of employees covered by the Enterprise Agreement is female?
 - (c) What percentage of employees covered by the Enterprise Agreement is from a Non English Speaking background?

NOTE: Rule 41 provides:

41. (1) An application for approval of an enterprise agreement must be accompanied by an affidavit shortly stating:

- (a) the award or awards, if any, over which the agreement will prevail if approved, or any agreement which will be rescinded and replaced by the agreement, if approved; ~
- (b) the basis upon which it is contended that:
 - (i) the agreement complies with relevant statutory requirements, including the Anti-Discrimination Act 1977, and
 - (ii) the agreement does not, on balance, provide a net detriment to employees covered by the agreement when compared with the aggregate package of conditions of employment which would otherwise apply under applicable awards, and
 - (iii) the parties understand the effect of the agreement, and
 - (iv) the parties did not enter into the agreement under duress, and
 - (v) the agreement complies with any principles set by the Commission under section 33, or, if the agreement does not meet those requirements, that any departure from those principles does not prejudice the interest of any of the parties to the agreement; and
- (c) a comparison of conditions of employment under the agreement and those which would otherwise apply under relevant awards, or if there are no such awards, under the relevant employment conditions.

Where the agreement does not cover all employees of the employer, the affidavit must also state the basis on which it is contended that the Commission may approve the agreement under section 35(2).

BY AUTHORITY

T.E. McGrath
Industrial Registrar
for the Rules Committee