



New South Wales

# Industrial Relations Commission Rules (Amendment No 3) 2000

under the

Industrial Relations Act 1996

The Rule Committee of the Industrial Relations Commission made the following rules of the Commission under the *Industrial Relations Act 1996* on 15 September 2000.

T E McGrath

Industrial Registrar and Secretary for the Rule Committee

## Explanatory note

The object of these Rules is to change the procedure for instituting proceedings for an offence in the Industrial Relations Commission. At present, such proceedings are instituted by application for summons, and the summons is then issued by the Industrial Registrar. Under the new procedure, a person seeking to institute criminal proceedings in the Commission must apply for an order from the Commission in Court Session under section 4 of the *Supreme Court (Summary Jurisdiction) Act 1967* (as applied to the Commission by section 168 of the *Industrial Relations Act 1996*). The Commission may, by making such an order, require the person alleged to have committed the offence to appear at a time and place specified in the order.

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# **Industrial Relations Commission Rules (Amendment No 3) 2000**

## **1 Name of Rules**

These Rules are the *Industrial Relations Commission Rules (Amendment No 3) 2000*.

## **2 Commencement**

These Rules commence on 6 October 2000.

## **3 Amendment of Industrial Relations Commission Rules 1996**

The *Industrial Relations Commission Rules 1996* are amended as set out in Schedule 1.

## **4 Notes**

The explanatory note does not form part of these Rules.

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## Schedule 1 Amendments

(Clause 3)

### [1] Rule 3 Division of Rules

Omit the matter relating to Part 28. Insert instead:

PART 27A—PROCEEDINGS FOR OFFENCES

PART 28—PROCEEDINGS TO RECOVER A CIVIL  
PENALTY

### [2] Part 27A

Insert after Part 27:

## Part 27A Proceedings for offences

### 217A Application

This Part applies only to proceedings before the Commission in Court Session.

### 217B Prosecutions

- (1) Proceedings before the Commission in Court Session for an offence (other than contempt) must, unless otherwise provided, be commenced by an application for an order under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* (as applied to the Commission by section 168 of the *Industrial Relations Act 1996*).
- (2) The application must state:
  - (a) the name and address of the person by whom the proceedings are brought (*the prosecutor*), and
  - (b) the capacity in which the prosecutor is taking the proceedings, and
  - (c) the name and address of the person against whom the proceedings are brought (*the defendant*), and
  - (d) the Act and the section under which the defendant is alleged to have committed an offence, and

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(e) the nature of the offence that is alleged.

- (3) The Commission may require the prosecutor to file, in support of the application for an order filed under subrule (1):
- (a) an affidavit verifying the allegations made in the application, and
  - (b) a minute of the order claimed.

#### **217C Service**

- (1) A minute of any order made by the Commission under section 4 (1) or section 10 (b) of the *Supreme Court (Summary Jurisdiction) Act 1967*, a copy of the application for an order, and a copy of any affidavits used to obtain either of those orders, are to be served on the defendant by the prosecutor at least 3 clear days before the time specified in the minute of the order.
- (2) The application for the order and any affidavit in support of the application are not to be served on the defendant before the making of the order, unless the Commission otherwise directs.
- (3) Such service must be effected in the manner specified in Rules 104 (a) or (b), 105 (a), (b) or (c), 106 (2) (a), (b) or (c) or 107 (1) or (2).

#### **217D Discontinuance and withdrawal of proceedings**

Any proceedings under this Part may, with leave of the Commission, be discontinued or withdrawn in accordance with Part 19.

#### **217E Amendment of process**

The Commission may, on the application of any party at any time during the proceedings or made, in writing, to the Registrar, at any time, allow an amendment to be made of any process upon such terms as to adjournment, the times within which any matter or thing may be done in connection with the proceedings, and service of notice of the amendment, as the Commission thinks fit.

**[3] Part 28, heading**

Omit the heading.

Insert instead “**Part 28 Proceedings to recover a civil penalty**”.

**[4] Rule 218 Application**

Omit subrule (2).

**[5] Rule 219**

Omit the rule. Insert instead:

**219 Proceedings to recover a civil penalty**

- (1) Proceedings before the Commission in Court Session to recover a civil penalty must, unless otherwise provided, be commenced by application for summons.
- (2) The application must state:
  - (a) the name and address of the person by whom the proceedings are brought (*the prosecutor*), and
  - (b) the capacity in which the prosecutor is taking the proceedings, and
  - (c) the name and address of the person against whom the proceedings are brought (*the defendant*), and
  - (d) the provision of the industrial instrument that the defendant is alleged to have contravened, and
  - (e) the nature of the contravention that is alleged, and
  - (f) particulars of any payment which it is alleged the defendant has failed to make, and whether an application is to be made under section 358 of the Act for an order in respect of those payments.
- (3) The Commission may require the prosecutor to file, in support of the application for a summons filed under subrule (1):
  - (a) an affidavit verifying the allegations made in the application, and
  - (b) a summons, addressed to the defendant, for signature by or on behalf of the Registrar.

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### **[6]    Schedule 2 Forms**

Omit “Prosecution Or” wherever occurring from the items relating to Forms 16 and 17 in the Table at the end of the General Note on Use of Forms.

### **[7]    Schedule 2, Forms 16 and 17**

Omit “Prosecution or” and “Prosecution and” wherever occurring.

### **[8]    Schedule 2, Form 16**

Omit “*place of offence*”. Insert instead “*place of contravention*”.

### **[9]    Schedule 2, Form 16**

Omit “*(set out details of offence(s) or contravention(s) and specific description of legislation creating the offence or of the other industrial instrument) alleged to have been breached*”.

Insert instead “*(set out details of contravention(s) and specific description of the industrial instrument alleged to have been breached)*”.

### **[10]   Schedule 2, Form 17**

Omit “*offence(s)*” wherever occurring. Insert instead “*contravention(s)*”.

BY AUTHORITY