



New South Wales

Industrial Relations (General) Amendment (Fees) Regulation 2005

under the

Industrial Relations Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Industrial Relations Act 1996*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to amend the *Industrial Relations (General) Regulation 2001* so as to enable new fees to be charged by the Industrial Relations Commission (**the Commission**) and to increase the fees that the Commission currently charges.

The new fees include fees for proceedings relating to unfair contracts and criminal proceedings. Fees for civil matters will differ between those charged to natural persons and those charged to corporations with a turnover of more than \$200,000, and will mirror fees currently charged in the Supreme Court for the hearing of civil matters.

Fees for applications under section 84 of the *Industrial Relations Act 1996* (unfair dismissal determinations) are increased, and new fees for appeal applications under section 197 of that Act (Local Court determinations) are introduced. There are also new fees relating to the issue of process, certification of orders and the provision of transcripts and recordings of Commission proceedings.

The Industrial Registrar will be able to approve the charging of a fee for services where a fee is not otherwise prescribed, and will continue to exercise the discretionary power to waive fees in cases of financial hardship.

Certain fees will not apply to industrial organisations, government departments or statutory bodies (other than the WorkCover Authority) whose expenditure is paid out of the Consolidated Fund.

This Regulation is made under the *Industrial Relations Act 1996*, including section 183 (Regulations relating to fees).

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Clause 1 Industrial Relations (General) Amendment (Fees) Regulation 2005

Industrial Relations (General) Amendment (Fees) Regulation 2005

under the

Industrial Relations Act 1996

1 Name of Regulation

This Regulation is the *Industrial Relations (General) Amendment (Fees) Regulation 2005*.

2 Commencement

This Regulation commences on 1 August 2005.

3 Amendment of Industrial Relations (General) Regulation 2001

The *Industrial Relations (General) Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

corporation has the same meaning as in section 57A of the *Corporations Act 2001* of the Commonwealth.

hearing allocation fee means a fee for allocating a date for the hearing of proceedings.

hearing fee means a fee for the hearing of proceedings.

the IRC Rules means the *Industrial Relations Commission Rules 1996*.

[2] Clause 3 (2)

Insert “(other than those in Schedule 1)” after “text of this Regulation”.

[3] Clauses 21 and 22

Omit the clauses.

[4] Part 5A

Insert after Part 5:

Part 5A Commission fees

23A Amounts payable in relation to proceedings in the Commission

- (1) Subject to this Regulation, the fee that a person must pay in respect of a matter referred to in Column 1 of Schedule 1 is:
 - (a) except as provided by paragraph (b), the fee specified in respect of that matter in Column 2 of that Schedule, or
 - (b) if the person is a corporation and a fee is specified in respect of that matter in Column 3 of that Schedule, the fee so specified.
- (2) Despite subclause (1), the fee payable by a corporation that produces evidence, satisfactory to the Industrial Registrar:
 - (a) that its turnover, in the financial year of the corporation immediately preceding the financial year in which the fees are to be taken, was less than \$200,000, or

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(b) if the corporation has not been in existence for a full financial year, that its turnover in its first financial year is likely to be less than \$200,000,
is the fee specified in Column 2 of Schedule 1.

23B Persons by and to whom fees are payable

- (1) Any fee imposed by Schedule 1 (other than a hearing allocation fee or hearing fee) is payable, by the person at whose request the relevant document is filed or service rendered, to the Industrial Registrar.
- (2) If a document is filed or service rendered at the request of a person acting as agent for another person, each of those persons is jointly and severally liable for payment of any such fee.

23C When fees become due

- (1) A fee imposed by Schedule 1 (other than a hearing allocation fee or hearing fee) becomes due when the document concerned is filed or the service concerned is rendered.
- (2) Despite subclause (1), the Industrial Registrar may require any fee for the document or service to be paid before the document is filed or the service rendered.

23D Payment of hearing allocation fees

- (1) A hearing allocation fee in relation to any proceedings is payable:
 - (a) except as provided by paragraph (b), by the applicant or appellant, or
 - (b) if the Commission or the Industrial Registrar makes any order as to the payment of the fee, by the parties and in the proportions so ordered.
- (2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for payment of the hearing allocation fee.
- (3) A hearing allocation fee is not payable in relation to any interlocutory hearing.
- (4) A hearing allocation fee becomes payable:
 - (a) immediately after a date is allocated for hearing the proceedings, or

(b) when the Commission or the Industrial Registrar notifies the parties in writing of the Commission's or Industrial Registrar's intention to allocate a date for hearing the proceedings, whichever first occurs.

23E Payment of hearing fees

- (1) A hearing fee in relation to any proceedings is payable:
 - (a) except as provided by paragraph (b), by the applicant or appellant, or
 - (b) if the Commission or the Industrial Registrar makes any order as to the payment of the fee, by the parties and in the proportions so ordered.
- (2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for payment of the hearing fee.
- (3) A hearing fee is not payable in relation to a hearing whose sole purpose is the delivery of a reserved judgment.
- (4) A hearing fee is not payable in respect of any day or part of a day (and, if paid, is to be remitted) if:
 - (a) the hearing fails to take place on that day or part of a day, and
 - (b) the Industrial Registrar is satisfied that the hearing failed to take place due to circumstances beyond the control of the parties.
- (5) A hearing fee becomes payable when the Commission or the Industrial Registrar gives written notice to the person liable to pay the hearing fee of the amount of the fee payable.

23F General power to waive, postpone and remit

- (1) The Industrial Registrar may, by order in writing, direct that the whole or any part of any fee payable to the Industrial Registrar be postponed, waived or remitted on grounds of financial hardship, subject to such conditions (if any) as the Industrial Registrar thinks fit to impose.
- (2) The powers conferred by this clause are to be exercised in accordance with such guidelines as may from time to time be published by the Attorney General.

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23G Circumstances in which fees not chargeable

- (1) Fees under Schedule 1 are not payable by the Crown, or by any person (other than the WorkCover Authority) acting on behalf of the Crown, with respect to any proceedings to which any of the following persons or bodies (other than the WorkCover Authority) is a party:
 - (a) the Crown,
 - (b) any Minister of the Crown,
 - (c) any statutory body whose expenditure is paid out of the Consolidated Fund.
- (2) Subclause (1) does not prevent the recovery by the Crown or any such person or body of any fees that would, had they been paid by the Crown or any such person or body, have been so recoverable.
- (3) The Industrial Registrar may require evidence to be furnished for the purpose of deciding whether a statutory body's expenditure is paid out of the Consolidated Fund.
- (4) Fees under Schedule 1 are not payable by:
 - (a) any industrial organisation, or
 - (b) any association registered under Chapter 6 of the Act, unless Schedule 1 expressly so provides.

[5] Clause 44 Savings provisions

Insert at the end of the clause:

- (2) No hearing allocation fee or hearing fee is payable under this Regulation in respect of any proceedings before the Full Bench of the Commission on an application for leave to appeal if proceedings on the application were commenced before 1 August 2005.
- (3) No hearing allocation fee or hearing fee is payable under this Regulation in respect of any proceedings before the Full Bench of the Commission on an appeal if proceedings on the application for leave from which the appeal arises were commenced before 1 August 2005.
- (4) No hearing fee is payable under this Regulation in respect of any hearing in any other proceedings before the Commission if a date for the hearing was allocated before 1 August 2005.

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Schedule 1

[6] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Commission fees

(Clause 23A)

Fees for proceedings before Commission in Court Session

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Filing an application under Division 2 of Part 9 of Chapter 2 of the Act	\$638	\$1,276
2 Filing notice of leave to appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Division 2 of Part 9 of Chapter 2 of the Act	\$708	\$1,416
3 Filing an application for an order under section 246 of the <i>Criminal Procedure Act 1986</i> in respect of an offence taken before the Commission:	\$638	\$1,276
(a) under section 397 (1) (b) of the <i>Industrial Relations Act 1996</i> , or		
(b) under section 105 (1) (b) of the <i>Occupational Health and Safety Act 2000</i>		
4 Filing notice of leave to appeal to the Full Bench of the Commission under section 197 (1) (a), (b) or (c) of the Act in respect of a decision of a Local Court	\$188	\$376
5 Filing a notice of motion under Rule 68 of the IRC Rules in any of the following proceedings:	\$147	\$294
(a) proceedings under Division 2 of Part 9 of Chapter 2 of the Act		
(b) proceedings on an appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Division 2 of Part 9 of Chapter 2 of the Act		

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Schedule 1 Amendments

Fees for proceedings before Commission in Court Session

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
(c) proceedings for an offence taken before the Commission:		
(i) under section 397 (1) (b) of the Act, or		
(ii) under section 105 (1) (b) of the <i>Occupational Health and Safety Act 2000</i>		
(d) proceedings on an appeal to the Full Bench of the Commission under section 197 (1) (a), (b) or (c) of the Act in respect of a decision of a Local Court		
6 For allocation of a date for hearing in relation to:	\$1,216	\$2,432
(a) proceedings under Division 2 of Part 9 of Chapter 2, or		
(b) proceedings on an appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Division 2 of Part 9 of Chapter 2 of the Act		
7 For the hearing of proceedings under Division 2 of Part 9 of Chapter 2 of the Act, for each half day of hearing on or after the 11th day	\$227	\$454
Note. For the purposes of this item, a half day comprises a period of 3 hours or less, such period to include any adjournment of less than half an hour.		

Fees for proceedings before Commission otherwise than in Court Session

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Filing an application under section 84 of the Act	\$54	—
2 Filing notice of leave to appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Part 6 of Chapter 2 of the Act	\$188	\$376

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Schedule 1

Miscellaneous fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Issuing a subpoena for production, or for production and to give evidence	\$55	\$110
2 Issuing a subpoena to give evidence	\$28	\$56
3 Opening or keeping open the registry or part of the registry:		
(a) on a Saturday, Sunday or public holiday, or	\$506	\$1,012
(b) on any other day:		
(i) before 8.30am or after 4.30pm	\$506	\$1,012
(ii) between 8.30am and 9.00am or between 4.00pm and 4.30pm	\$53	\$106
4 Furnishing a certified copy of a judgment or order, or of the written opinion or reasons for opinion of any member of the Commission or the Industrial Registrar	\$55	\$110
Note. Fees under this item are not chargeable to any party to proceedings in respect of the first such copy that is supplied to that party.		
5 Furnishing an uncertified copy of a judgment or order, or of the written opinion or reasons for opinion of any member of the Commission or the Industrial Registrar	\$31	\$50
Note. Fees under this item are not chargeable to any party to proceedings in respect of the first such copy that is supplied to that party.		
6 Making a copy of any document (otherwise than as provided for by items 4 and 5)	\$10, plus an additional \$2 per page after the first 5 pages	—
Note 1. Fees under this item are not chargeable to any person in respect of whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the making of such a copy without charge.		
Note 2. Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.		

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Miscellaneous fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
7 Supplying a duplicate tape recording of sound-recorded evidence	\$36 per cassette	—
Note 1. Fees under this item are not chargeable to any person to whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the supply of such a recording without charge.		
Note 2. Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.		
8 Supplying a copy of the transcript of any proceedings:		
(a) where the matter being transcribed is under 3 months old	\$66, plus an additional \$7.90 per page after the first 8 pages	—
(b) where the matter being transcribed is 3 months old or older	\$78, plus an additional \$9.00 per page after the first 8 pages	—
Note 1. Fees under this item are not chargeable to any person to whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the supply of such a copy without charge.		
Note 2. Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.		
9 For retrieval from archives of any document or file	\$55	\$110
10 Providing any service for which a fee is not otherwise imposed by this Schedule	\$30	\$60
Note. A fee may not be imposed under this item except with the approval of the Industrial Registrar.		

BY AUTHORITY