

1992—No. 139

INDUSTRIAL RELATIONS ACT 1991—REGULATION
(Industrial Relations Commission Rules (Transitional) Regulation 1992)

NEW SOUTH WALES



[Published in Gazette No. 40 of 27 March 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Industrial Relations Act 1991, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY
Minister for Industrial Relations.

Citation

1. This Regulation may be cited as the Industrial Relations Commission Rules (Transitional) Regulation 1992.

Commencement

2. This Regulation commences on the commencement of the Industrial Relations Act 1991.

Interim rules of the Industrial Relations Commission

3. The Industrial Relations Commission (Interim) Rules 1992 set out in Appendix A apply as the rules of the Industrial Relations Commission until rules of that Commission are made under section 372 of the Industrial Relations Act 1991.

APPENDIX A
INDUSTRIAL RELATIONS COMMISSION
(INTERIM) RULES 1992
PART 1—PRELIMINARY

Citation

1. These Rules may be cited as the Industrial Relations Commission (Interim) Rules 1992.

Commencement

2. These Rules commence on the commencement of the Industrial Relations Act 1991.

Definitions

3. In these Rules:

“**approved form**” means a form approved by the Registrar;

“**Committee**” means a Conciliation Committee or a Contract Regulation Committee and, where a matter within Part 4 or Part 6 is being dealt with, includes the Chairperson of the Committee;

“**date of decision**”, in relation to determining the period within which an appeal may be made, means the date on which the decision is announced, or where it is indicated that a written decision or reasons for decision are to be issued, the date when the written decision or reasons are made available, whichever is the later;

“**decision**” includes an award, order, direction, contract determination or ruling;

“**filed**” means filed in the office of the Registry in Sydney;

“**President**” means the President of the Industrial Relations Commission of New South Wales;

“**promptly**”, in relation to the performance of an act, means immediately, or where that is not practicable, as soon as such performance is reasonably possible in the circumstances;

“**process**” means an application, reference, notice of appeal or other process by which proceedings are initiated and any other document filed or served in the course of proceedings;

“**Registrar**” means the Industrial Registrar under the Act;

“**Registry**” means the office of the Registry in Sydney or in any prescribed region;

“**respondent**” means a party to the proceedings other than an applicant or appellant;

“**the Act**” means the Industrial Relations Act 1991 and references to sections in these Rules refer to sections in that Act;

“**tribunal**” includes the Commission, a Committee or the Registrar.

Forms

4. (1) If an approved form requires the form to be completed in a specified manner, or requires specified information to be included in, attached to or furnished with the form, the form is not duly completed unless it is completed in that manner and unless it includes, or has attached to or furnished with it, that information.

(2) A document, which in the opinion of the Registrar, is either substantially in accordance with the required content of any approved form or contains only such variation as the nature of the case necessitates, may be accepted for filing in the Registry.

PART 2—INDUSTRIAL RELATIONS COMMISSION AND OTHER TRIBUNALS

Division 1—General

Seals and stamps

5. (1) There shall be a seal of the Commission which shall bear the Royal Arms, with the words “The Seal of the Industrial Relations Commission” around or above, and the words “of New South Wales” below.

(2) The seal is to be kept in the custody of the Registrar and affixed to all Rules of the Commission and such other documents as the President directs.

(3) There shall be a stamp of the Commission bearing the words “Industrial Relations Commission of New South Wales”.

(4) The stamp is to be kept in the custody of the Registrar and used on all process relating to the Commission filed with or issued by the Registrar and such other documents as the President directs.

(5) There shall be a stamp of the Registrar bearing the words “Industrial Registrar”.

(6) A rubber stamp or other facsimile may be used instead of such seal or stamp for any purpose.

Registrar to receive and submit all documents filed

6. (1) All proceedings before a tribunal under the Act or any other Act shall be commenced and continued in the office of the Registry in Sydney.

(2) The Registrar shall, either personally or by any officer as the Registrar directs in the name and on behalf of the Registrar, receive and submit to the President of the Commission (for the purpose of directing the business of the Commission) all documents filed in respect of applications made under the Act or any other Act in relation to the Commission or a Committee, issue all process and all orders of the Commission or a Committee and keep a record of the proceedings of the Commission and any Committee.

(3) The Registrar shall endorse the date of lodgment on all process.

(4) Where the signature of the Registrar is required on any document, a rubber stamp or other facsimile of that signature may be affixed to the document by such officer as the Registrar authorises.

Registry hours

7. (1) The office of the Registry in Sydney shall be open to the public for the transaction of business from 9.30 a.m. to 4.00 p.m. on all days except Saturdays, Sundays and public holidays.

(2) The hours of business at any other office of the Registry shall be determined by the Registrar.

(3) The office of the Registry in Sydney may be opened at other times by the direction of the Registrar or the President.

Serial numbers for filing

8. Documents relating to proceedings before the Commission, Conciliation Committees, Contract Regulation Committees and the Registrar shall be kept and maintained separately and shall bear a serial number which is distinctive to the particular proceeding.

Searches

9. (1) Except as provided by subrule (2), a person shall be at liberty to search in the Registry in any proceeding for the purpose of inspecting any document filed or lodged with the Registry.

(2) An order of the President is required for the purpose of search and inspection of a document where the proceeding or the appropriate part of the proceeding before a tribunal:

- (a) has been conducted privately; or
- (b) relates to evidence for which a direction has been given under section 369; or
- (c) relates to a matter in which the tribunal has previously directed that confidentiality should be observed.

Division 2—Initiation of Proceedings

Originating process

10. (1) Except as otherwise provided, the manner of application to the Commission or a Committee shall be in the approved form.

(2) A claim for relief from an unfair dismissal pursuant to section 246 shall be in the approved form.

(3) An application for an inquiry by the Industrial Court into an irregularity in connection with an election pursuant to section 453 shall be in the approved form.

(4) Where no form of application has been prescribed the originating process shall be in a form approved by the Registrar.

(5) In any proceedings between parties, or where the Commission or the Registrar directs, the originating process shall bear a note requiring any party wishing to appear before the Commission to file a Notice of Appearance in the approved form within 7 days of service of the process upon that person, and to serve a copy thereof on the applicant.

(6) The Commission may, at any stage of the proceedings, permit a person to appear notwithstanding failure to file notice of appearance.

(7) Where leave of a tribunal is required to commence proceedings or to take any step in proceedings, the application for leave shall be in an approved form and shall briefly but specifically state the reasons why leave should be granted. The form seeking leave may be combined with the form of application to which it relates.

Reference of matter to the Commission (concerning settled rights)

11. (1) A reference of a question, dispute, difficulty or grievance in respect of an award or agreement pursuant to section 188 shall be in the approved form and, in the case of a grievance, shall also state, briefly but

specifically, the reasons why leave should be granted for the matter to be referred to the Commission.

(2) The reference shall be accompanied by an affidavit which states, briefly but specifically, the manner in which and the extent to which the procedures in the award or agreement for the settlement of the question, dispute, difficulty or grievance have been complied with or which establishes an exemption pursuant to section 187.

(3) A copy of the reference and of the affidavit shall be served promptly on the other party or the representative of that party by the person so referring.

(4) The Commission may summon the persons concerned for the purpose of satisfying itself that any procedures in the award or agreement for the settlement of the question, dispute, difficulty or grievance have been complied with as far as is reasonably practicable in the circumstances.

(5) A request by the Commission that persons concerned attend a conference pursuant to section 190 (1) may be given in the approved form or in such other manner as the Commission determines.

(6) Where a question of changing conditions of employment fixed by an award or agreement arises the Commission may summon the parties to the making of the award or agreement to ascertain whether they concur in the making of such changes.

(7) Where notice of industrial action has been given pursuant to section 204 (3), but the Commission determines that section 188 applies, the Commission may accept the notice as a reference pursuant to section 188.

Compulsory conference (not concerning settled rights)

12. (1) Notice of industrial action pursuant to section 204 (3), shall be given to the Registrar in the approved form or in writing, orally, or by telephone or facsimile message or by other electronic means. The person giving such notification shall state the parties affected by the question, dispute or difficulty and relevant particulars.

(2) When the notification is given other than in writing, the person giving the notification shall confirm the notification in writing as soon as practicable.

(3) A copy of the notification (or its confirmation) shall be given promptly by the notifier to the other party or the representative of that party.

(4) A summons to a compulsory conference pursuant to section 204 shall be in the approved form.

(5) Where a question, dispute, difficulty or grievance is referred to the Commission pursuant to section 188, but the Commission believes that section 204 (2) applies, the Commission may accept the reference as notice pursuant to section 204 (3).

Arbitration after attempted conciliation

13. A certificate of attempted conciliation under section 208 shall be in the approved form.

Service of process

14. An applicant shall promptly and within the time and in the manner specified in Part 6, serve a copy of the originating process on:

- (a) any person named as a respondent; and
- (b) where the application relates to an award, the persons shown in the list maintained by the Registrar under Rule 49 (c) relevant to that award, unless the Registrar otherwise directs; and
- (c) such other persons as the Registrar may direct.

Registrar to facilitate service of process

15. (1) The Registrar shall take all reasonable steps to ascertain the persons interested in or who may be affected by an application and may require evidence to be supplied upon affidavit or otherwise as to the persons so interested or affected.

(2) Any such affidavit shall state the means of knowledge of the deponent and the inquiries or searches, which may have been undertaken to ascertain who is so interested or affected.

Affidavit of service

16. An affidavit of service in the approved form shall be filed by the applicant promptly after service of the originating process has been effected.

Matters initiated by Commission

17. (1) Where the Commission decides, on its own initiative, to inquire into any industrial matter or to exercise any of its functions it may

proceed summarily or direct that proceedings be commenced by a notice to show cause in the approved form.

(2) Such notice shall be served by the Registrar upon any person as the Commission may direct.

Appointment for hearing

18. (1) Notice of the appointment of a date, time and place for the mention or hearing of any originating process before a tribunal shall be promptly given to the applicant by the Registrar.

(2) Unless the appointed date, time and place are stated in the originating process, the applicant shall cause notice of such appointment in the approved form to be served upon the other parties promptly and at least within the time specified in Rule 84.

(3) Where the date, time and place have been appointed before the originating process has been served upon a party, notice of the appointment may be given to such party by endorsement of the notice on the originating process.

(4) The appointed date, time and place may be altered by notice given in accordance with Rule 87.

Urgency affidavit

19. (1) An applicant who desires that any matter should be dealt with as one of urgency shall file an affidavit setting out, briefly but specifically, the reasons for the request.

(2) A copy of the affidavit shall be served with the originating process but, if the proceedings before the tribunal have already commenced at the time of the filing of the affidavit, it shall promptly be served on each of the other parties.

Applications for hearings outside Sydney

20. (1) Where any party desires to request that the Commission (regional members excepted) sit at any place other than Sydney for the purpose of hearing any matter, the party may be called upon to file an affidavit in support, setting out, briefly but specifically, the nature of the matter, the grounds and reasons for the request, the number of witnesses likely to be called and the nature of the evidence to be given.

(2) A copy of the affidavit shall be served on each of the other parties and any affidavit in answer shall be filed within 3 days from the date of service upon that party of the copy of the affidavit.

Commission's exercise of powers of Registrar

21. Where in relation to proceedings before the Commission or a Committee any summons, notice, direction or other document may be signed or given or any extension of time may be granted by the Registrar, it may be signed, given or granted by the President or other member of the Commission.

Division 3—References, Appeals, etc.**Reference by Chairperson of a Committee**

22. A reference of a question or matter arising at a meeting of a Committee by the Chairperson of the Committee to the Commission pursuant to section 370 (7) shall be in the approved form.

Reference by Commission member to the Full Commission

23. A reference of any matter in a proceeding before a member of the Commission to the Full Commission pursuant to section 346 (2) (c) shall be in the approved form.

References by Commission to a Committee

24. A reference by the Commission to a Committee under section 347 (2) (a) or 348 (2) (a) for the exercise by that Committee of a function of the Commission shall be in the approved form.

Reference by Registrar to Commission

25. A reference by the Registrar under section 385 (1) to the Commission shall be in the approved form.

Removal of matter before the Registrar

26. A reference by the President of a matter before the Registrar under section 386 for hearing and determination by the Commission shall be in the approved form.

Service of documents following reference

27. (1) Upon a reference under Rule 22, 23, 24, 25 or 26, the applicant, or such other party as the Registrar directs, shall promptly serve upon the other party or parties before the tribunal a copy of:

- (a) the reference; and

(b) the appointment for hearing.

(2) The Registrar may also direct that a copy of the transcript of the proceedings (including the exhibits) before the tribunal from which the question or matter has been referred be similarly served.

(3) An affidavit of service in the approved form shall be filed by the applicant promptly after service of the documents has been effected.

Reference of industrial matter to Commonwealth Commission

28. A reference of an industrial matter by the President to a member of the Australian Industrial Relations Commission under section 395 (2) shall be in the approved form.

Appeal to Full Commission

29. (1) An appeal from a decision of the Commission to the Full Commission under section 382 (1) or (2) shall be in the approved form.

(2) An appeal shall be made within 28 days (or such further time as the Commission allows, before or after the expiration of that period) after the date of the decision appealed against.

(3) An application to extend the time to appeal may be included in the appeal and shall be in the approved form.

Prescribed certificate—section 382 (3) (b)

30. For the purpose of section 382 (3) (b), the prescribed certificate to be given in relation to a decision of the Commission that was made by consent of the parties shall be in the approved form.

Appeal from Registrar to Commission

31. (1) An application for leave to appeal to the Commission under section 387 from a decision or act of, or a refusal to make a decision or do an act by, the Registrar shall be in the approved form.

(2) An appeal shall be made within 28 days (or such further time as the Commission allows, before or after the expiration of that period) after the date of the decision or act or the date of the refusal to make a decision or do an act.

(3) An application to extend the time to appeal shall be in the approved form.

Application for stay of proceedings

32. Where it is intended to seek a stay of the whole or part of the decision of a tribunal pending the determination of the appeal, the appeal shall include an application to that effect.

Respondents

33. Each of the parties (other than the appellant) appearing or represented in the proceedings from which a decision is being appealed shall be joined as respondents to the appeal.

Service of appeal

34. (1) Upon lodging an appeal, the appellant shall (unless the Registrar otherwise directs) serve a copy of the appeal promptly on each of the respondents.

(2) An affidavit of service in the approved form shall be filed by the appellant promptly after service of the appeal has been effected.

Interlocutory decisions

35. Any decision made in any proceedings before a tribunal prior to a final decision in those proceedings shall be taken for the purposes of appeal to have been made on the same date as the date of the final decision.

Appeal book

36. Unless the Registrar otherwise directs, the appellant shall, within 28 days after the filing of an appeal, file an appeal book consisting of

- (a) the application and any documents subsequently filed in the proceedings; and
- (b) the transcript of the proceedings (including the exhibits) before the tribunal; and
- (c) the decision appealed against,

and shall serve a copy of the appeal book on each respondent.

Reference by Minister

37. (1) A reference by the Minister:

- (a) to the Commission under section 108 (2); or
- (b) to the Commission under section 345 (4); or

(c) to the Full Commission under section 346 (2) (a) or (b); or
(d) to a Conciliation Committee under section 347 (2) (a); or
(e) to a Contract Regulation Committee under section 348 (2) (a),
shall be in the approved form.

(2) Notice of the reference and of the appointment for hearing shall be given by the Registrar to such persons and in such manner as the Commission or the Chairperson of a Committee directs.

Discontinuance of Committee proceedings by Commission

38. (1) A direction of the Commission under section 347 (4), 348 (4) or 370 (9) that proceedings before a Committee be discontinued shall be in the approved form.

(2) In the case of a direction under section 370 (9), Rule 27 shall apply as if the discontinuance were a reference.

Division 4—Costs

Costs

39. (1) Where in any proceedings the Commission or a Committee orders, pursuant to section 252 or 358, the payment of costs, it may:

- (a) specify the amount of the costs to be paid; or
- (b) order that the costs be assessed or taxed by the Registrar; or
- (c) make orders for the ascertainment of the costs in such manner as it directs.

Taxation or assessment of costs

40. (1) Where costs are ordered to be assessed by the Registrar such assessment shall, unless otherwise ordered by the Commission or the Committee or determined by the Registrar, be as nearly as practicable in accordance with the scale of costs under the Local Court (Civil Claims) Act 1970 but having regard to the nature of the proceedings and their outcome.

(2) Where costs are ordered to be taxed by the Registrar, the scale of costs to be applied shall, unless otherwise ordered by the Commission or the Committee or determined by the Registrar, be as nearly as practicable that applicable under the District Court Act 1973 but the Registrar shall determine what percentage of the scale is appropriate having regard to the nature of the proceedings and their outcome.

(3) The procedure for taxation of costs shall as nearly as practicable be in accordance with Part 52 of the Supreme Court Rules 1970.

(4) Costs for more than one counsel, or for senior counsel, are not to be allowed.

Division 5—Committees

Establishment of a Committee

41. (1) An application to the Commission for the establishment of a Conciliation Committee pursuant to section 328 or for the establishment of a Contract Regulation Committee pursuant to section 330 shall be in the approved form.

(2) An applicant shall, unless the Registrar otherwise orders, file with the application an affidavit stating the nature of the applicant's interest in the matter and briefly but specifically the reasons for the application.

(3) The application shall also state the persons who are interested in or may be affected by the application.

(4) The application and affidavit shall be served promptly on such persons as the Registrar directs.

Dissolution of a Committee

42. (1) An application to the Commission for the dissolution of a Committee pursuant to section 336 (1) or (2) shall be in the approved form. Such application may be combined with an application under Rule 41.

(2) The application shall be served on such persons as the Registrar directs.

(3) The Registrar shall, not less than three months before the date on which the dissolution of a Committee will take place pursuant to section 336 (3), notify the parties who have the right to nominate a member of that Committee of the date of such dissolution.

(4) If the Registrar is of opinion that a Committee has ceased to function or has become obsolete, the Registrar may submit a report to that effect to the Commission.

(5) The Commission, after considering the report and hearing the interested parties (if any) may dissolve a Committee. Where the Commission considers that there are not any interested parties, it may dissolve the Committee in chambers.

Appointment of members of Committees

43. The agreement by a member or deputy member of a Committee pursuant to section 329 (3) (c) or section 331 (3) (b) shall be in the approved form.

Notice of sitting of a Committee

44. A sitting of a Committee may be convened by the Chairperson by service by the Registrar on the members of the Committee of a notice in the approved form or in such other manner as the Chairperson directs.

Division 6—Proceedings before Registrar**Procedure before Registrar**

45. The Registrar may, in relation to any matter committed to the Registrar by the Act or referred to the Registrar by the Commission:

- (a) summon any person to confer, give evidence, produce documents or other things or do all or any combination thereof; or
- (b) adjourn any hearing; or
- (c) give leave to amend any process.

Service of appointment before Registrar

46. Notice of an appointment to proceed upon any matter before the Registrar may be in the approved form or otherwise as the Registrar directs and, unless otherwise directed by the Registrar, shall be issued and served promptly and at least 3 days before the time appointed.

Application to Registrar for exemption from procedural requirements

47. An application to the Registrar for any order or direction relating to procedural requirements under these Rules or for any exemption therefrom shall be in the approved form supported by affidavit and may, unless the Registrar otherwise directs, be made ex parte.

Orders of Registrar to be stamped

48. Every order of the Registrar shall, when signed, be stamped with the stamp of the Registrar.

Division 7—Records of persons affected by awards**Records of persons affected by awards**

- 49.** The Registrar shall maintain records of
- (a) the parties to the making of each award; and
 - (b) State peak councils; and
 - (c) registered industrial organisations and other persons who substantiate to the Registrar that they respectively have a sufficient industrial interest in applications affecting a specified award to justify normally being served with process relating to that award.

PART 3—DOCUMENTS**Division 1—Documents****First page of documents in proceedings before tribunals**

50. (1) The first page of a document prepared by a party for use in a tribunal shall be set out in the approved form.

(2) A document in any proceedings before a tribunal shall be headed as required by Rule 52 and shall show the serial number of the proceedings.

(3) A document in any proceedings in relation to an award shall be entitled with “Re” together with the name of the award, the name of the applicant and an abridged statement of the nature of the proceedings.

(4) A document in any proceedings between parties shall be entitled between the parties who shall be described as applicant or appellant and respondent or as the case may be, together with an abridged statement of the nature of the proceedings.

(5) A document in any proceedings in which there is no other party and which does not relate to an award shall be entitled “The application of” together with the name of the applicant and an abridged statement of the nature of the proceedings.

(6) A document in proceedings which are initiated by the Commission shall be entitled as directed by the Commission, or in the absence of such a direction, as directed by the Registrar.

(7) Except in the case of an originating process or a document to be served on a person who is not a party to the proceedings, a document may bear an abbreviation of the title of the proceedings sufficient to identify the proceedings.

(8) The Registrar may add to the title of any document, filed or lodged in any proceedings before a tribunal, any matter which the Registrar requires to add for the purpose of clarification.

Address for service to be included

51. (1) At the foot of the left hand side of the first page of a document prepared by a party for use in a tribunal there shall be shown the name, address, telephone number and facsimile number (if any) of any solicitor or agent for the party, and where the address for service of the party is the office of a solicitor or an agent who has an exchange box in a document exchange of Australian Document Exchange Pty Limited, the number of that box.

(2) Subrule (1) does not apply where the party preparing a document is not represented by a solicitor or an agent but the document shall show the name and address for service of the party (including telephone number and any facsimile number and any such Document Exchange box number) at the foot of the left hand side of the first page of the document.

(3) The address shown on the document shall be the address for service of the party lodging the document until notice of change of address is given.

Headings

52. (1) Documents in any proceedings before the Commission shall be headed "Before the Industrial Relations Commission of New South Wales".

(2) Documents in any proceedings before a Committee shall be headed "Before the" together with the name of the Committee.

(3) Documents in any proceedings before the Industrial Registrar shall be headed "Before the Industrial Registrar".

Signing documents

53. All process filed by a party shall be signed by or on behalf of that party or by that party's solicitor or agent unless otherwise indicated or required.

Paper and writing

54. (1) This Rule applies to a document prepared by a party for use in a tribunal, except to the extent that the nature of the document renders compliance impracticable.

(2) A document shall be on paper of durable quality, capable of receiving ink writing, and measuring about 297 millimetres long and 210 millimetres wide.

(3) The writing on a document shall be on one face of the paper only and a margin of not less than 25 millimetres shall be kept clear on the left hand side.

(4) There shall be a space of not less than 3 millimetres between the lines of writing.

(5) The writing shall be clear, sharp, legible and permanent.

(6) A carbon copy shall not be sufficient.

(7) A document shall not be filed if it bears any blotting, erasure, or such other alteration as to cause material disfigurement.

Numbers

55. Dates, sums and other numbers shall be expressed in figures and not in words.

Scandal, etc.

56. A tribunal may order to be struck out of any document any matter which is scandalous, frivolous, vexatious, irrelevant or otherwise oppressive.

Copies of documents to be filed

57. In relation to all proceedings before a tribunal, all documents filed shall be accompanied by such number of copies as the Registrar specifies or subsequently directs.

Division 2—Solicitors and Agents

Solicitors or agents

58. Every matter or thing which under these Rules is required or permitted to be done by a party may (subject to section 359) be done by a solicitor or agent for the party.

Change of solicitor or agent

59. The change of a solicitor or agent, the appointment or removal of a solicitor or agent and the signature of a solicitor shall be in accordance with Part 66 of the Supreme Court Rules 1970.

Effect of change of solicitor or agent

60. (1) A change (including removal or withdrawal) of a solicitor or agent of which notice is required or permitted to be filed has no effect:

- (a) as between a party or solicitor or agent to whom the change relates and a tribunal until notice of the change is filed; and
- (b) as regards any other party, until notice of the change is filed and served on that party (or the party's solicitor or agent).

(2) Where a notice of change of solicitor or agent has no effect because it has not been filed or served in accordance with this clause, the address of the solicitor or agent (or solicitor's agent) may be continued to be used as the address for service.

PART 4—GENERAL PROCEDURE**General powers**

61. A tribunal may in relation to any proceedings before it:

- (a) hear and determine the proceedings in the absence of a party who has been summoned or given notice to appear; or
- (b) sit at any place; or
- (c) refer any matter to an expert and receive the report of the expert as evidence; or
- (d) direct parties to be joined or struck out; or
- (e) allow the amendment, for such purposes and on such terms as it thinks fit, of any proceedings; or
- (f) correct, amend or waive any error, defect or irregularity, whether in substance or in form; or
- (g) determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties before it and may require that those cases be presented within the periods so determined.

Directions generally

62. (1) A tribunal may generally given all such directions and do all such things as in its opinion will enable expense or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties and will contribute to the expeditious conduct of the proceedings and the just determination of the matter or dispute and the equitable disposal of proceedings.

- (2) Without limiting the generality of subrule (1), a tribunal may:
- (a) make orders for the purpose of defining the matters in dispute and the issues to be decided; or
 - (b) direct the mode in which issues may be proved, including whether the presentation of the whole or any part of the evidence may be in writing or by affidavit or orally; or
 - (c) give directions with regard to the production of documents and the making of admissions (subject to all just exceptions) with respect to any document or to any question of fact; or
 - (d) dispense with the formal proof of any matter which is not genuinely in dispute.

(3) A tribunal may exercise its powers under this clause at any time after the commencement of the proceedings and on its own motion or on the application of any party.

Directions where procedure wanting or in doubt

63. (1) Where any person desires to commence proceedings or to take any steps in a particular case before a tribunal and:

- (a) the provisions of the Act and these Rules do not make any or adequate provision for a procedure to be followed and there is no established practice or usage of the Commission; or
- (b) a difficulty arises or doubt exists as to the procedure to be followed,

the tribunal may give directions or make such orders with respect to the procedure to be followed as it considers necessary.

(2) Directions may be given or orders may be made by the tribunal:

- (a) on its own initiative; or
- (b) on application in the approved form by a party seeking such directions or orders.

(3) Such application may be made ex parte, but shall be served on such persons as the tribunal directs.

(4) Such directions and orders are to be directed to providing a just, speedy and inexpensive determination of proceedings.

(5) Proceedings commenced in accordance with such directions or orders are to be taken to be well commenced.

(6) Steps taken in accordance with such directions or orders are to be taken to be regular and sufficient.

Discovery and inspection

64. (1) A tribunal may make such orders for discovery and inspection of documents as it thinks fit.

(2) The procedure for discovery and inspection shall as nearly as practicable be that applicable to the Supreme Court of New South Wales in accordance with Part 23 of the Supreme Court Rules 1970.

Production of document on notice

65. Where a party to any proceedings serves on another party a notice requiring the party served to produce at any proceedings a document or thing for the purpose of evidence and that document or thing is in the possession, custody or power to produce of the party served, the party shall, unless the tribunal otherwise orders, produce the document or thing in accordance with the notice without the need for any summons for production.

Exhibits

66. (1) Where a matter before a tribunal has been completed, the Registrar shall retain any exhibit until after the expiration of the appeal period.

(2) Where a notice of appeal has not been filed within the permitted time, the Registrar may, on the Registrar's initiative or upon written application, return any exhibit to the person who tendered it or to an; person who proves, to the Registrar's satisfaction, an entitlement to the exhibit, subject to an obligation to return the exhibit if required.

(3) Any exhibit may be taken out by leave or order of the tribunal or of the President, subject to an undertaking to return the exhibit if required.

Discontinuance of process

67. Any proceeding before a tribunal may, with the leave of that tribunal, be discontinued by the party who initiated that proceeding.

Want of prosecution

68. Where any party has not done any act required to be done by or under the Act or any other Act or otherwise has not pursued the proceedings with due diligence, a tribunal may:

(a) order that the application be dismissed for want of prosecution; or

- (b) fix a definite time for the doing of the act and at the same time order that upon non-compliance the application shall stand dismissed for want of prosecution or subsequently, in the event of non-compliance, order that it be dismissed; or
- (c) make such further or other order as in the circumstances may seem just.

Waiver of compliance with procedural requirements

69. (1) Application to a tribunal to waive, pursuant to section 363, strict compliance with any procedural requirement or to exempt any party from compliance with any such requirement either before or after the occasion for compliance arises, may be made in the approved form or orally in the course of the proceedings and if made separately shall, unless the tribunal otherwise directs, be supported by affidavit.

(2) Subject to any direction of the Commission or the Chairperson of the Committee, the Registrar may extend the time fixed by these Rules for the lodging of any document or the doing of any act (whether or not that time has expired).

Supplementary practice before Commission

70. (1) Where:

- (a) the provisions of the Act and the Regulation do not make any or adequate provision for a procedure to be followed and there is no established practice or usage of the tribunal; or
- (b) a difficulty arises or doubt exists as to the procedure to be followed; or
- (c) a tribunal desires to change any established practice, procedure or usage,

the President may, by practice note, determine or change the practice, procedure or usage.

(2) Such practice note is to be signed by the President and published by the Registrar in the Industrial Gazette.

(3) Practice notes are to be directed to providing a just, speedy and inexpensive determination of proceedings.

(4) A practice note becomes effective 14 days after publication in the Industrial Gazette or such later date as the practice note directs.

(5) Where:

- (a) there are no relevant provisions; and

(b) there is no established practice, procedure or usage; and

(c) there is no order, direction or practice note in force,

the practice, procedure or usage for the time being of the Industrial Court is, as far as practicable and subject to section 354, to regulate the practice, procedure or usage of the Commission.

PART 5—SUMMONSES

Interpretation

71. In this Part:

“summons for production” means a summons to attend and produce documents or things as referred to in section 362 (3) (c);

“summons to confer” means a summons to attend and confer as referred to in section 362 (3) (a);

“summons to give evidence” means a summons to attend and give evidence as referred to in section 362 (3) (b);

“the person named” means, in relation to a summons, the person to whom the summons is addressed;

“tribunal”, in relation to a summons, means the person or body authorised to issue the summons and in relation to a Committee means the Chairperson thereof.

Summonses

72. (1) Unless the tribunal otherwise orders:

(a) a summons to confer; and

(b) a summons for production; and

(c) a summons to give evidence; and

(d) a summons for production and to give evidence,

shall be in the appropriate approved form.

(2) Where the Registrar issues a summons in accordance with a direction of a tribunal (whether or not the direction was given by the tribunal on its own motion), the Registrar is required to add a notation to the summons that the summons was issued at the direction of the tribunal.

(3) On the request by a party, the Registrar shall, if authorised by the Act and unless the tribunal otherwise orders, issue a summons for production or to give evidence in the approved form.

(4) Any number of persons may be included in one summons, but the copy served need only contain the name of the person upon whom it is served.

(5) A party requesting the issue of a summons shall produce a form of summons and file a copy thereof.

Conduct money

73. (1) Where a summons for production or to give evidence is issued at the request of a party, the person named is to be tendered, at the time of service of the summons or not later than a reasonable time before the day on which compliance is required by the summons, a sum sufficient to meet the reasonable expenses of complying with the summons by the person named.

(2) The person named is not required to attend on any day on which attendance is required unless that sum is paid or tendered at the relevant time.

Service of summons

74. (1) Service of a summons under this Part shall be effected in accordance with this Part unless a tribunal or the Registrar otherwise directs.

(2) Service of a summons may be effected by handing the summons or a copy of the summons to the person named.

(3) If, on tender of the summons to the person named, the person refuses to accept it, the summons may be served by putting it down in the presence of that person after the nature of the summons has been explained.

(4) Where the person named in the summons is a party for whom a solicitor or an agent is specified in the proceedings, the summons may, with the consent of the solicitor or agent, be served on the person named by leaving it at the address for service.

(5) Service of a summons on a corporation may be effected by serving the summons in accordance with subrule (2) or (3), as the case may require, on the mayor, chairperson or president, or on the town clerk, clerk, secretary, treasurer or other similar officer of the corporation or, where provision is made by or under any Act for service of a document on a corporation, by serving the summons in accordance with that provision.

(6) Service of a summons on any organisation or association registered or recognised under the Act may be effected by serving the summons in accordance with subrule (2) or (3), as the case may require, on the president, principal officer, secretary, treasurer or other similar officer of the organisation or by serving the summons in accordance with Rule 82.

(7) A summons issued at the request of a party may not be served on the person named later than 5 days before the date the person is required to attend, unless the tribunal otherwise orders.

(8) An order for short service may be made at any time.

(9) An order for short service may be sought by filing an application, indicating why an order for short service should be made.

(10) An application may, unless the tribunal orders otherwise, be dealt with in chambers without the appearance of any person.

(11) A copy of any order for short service must be served with the summons.

Setting aside of summons

75. (1) A tribunal may on application by the person named in the summons set aside wholly or in part a summons issued at the request of a party.

(2) An application under subrule (1) shall be served on the party on whose request the summons was issued.

Production by non-party

76. (1) A summons requiring production of any document or thing shall, unless the tribunal otherwise orders, permit the person named to produce the document or thing to the Registrar by hand or by post so that it is received not later than 2 days before the first date on which production is required, instead of attending and producing it.

(2) Where a document or thing is produced to the Registrar in accordance with subrule (1), the Registrar shall:

- (a) if requested so to do, give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the tribunal may direct.

Production of documents by Registrar

77. (1) Where for the purpose of any proceedings a person requests the Registrar in writing to produce to the Commission or a Committee any document in the custody of the Registrar, the Registrar shall, unless the tribunal otherwise orders, arrange for the production of the document in accordance with the request.

(2) A party desiring the production of a document or thing in the custody of any other tribunal or court must request, in writing, the Registrar to proceed under subrule (3).

(3) On the receipt of a request, the Registrar is to request the tribunal or court holding the document or thing to send it to the Registrar.

(4) The Registrar is required upon receipt of such document or thing to produce the same in accordance with the request or as the tribunal may direct.

Allowance payable to witnesses

78. Allowances to persons required by a summons issued at the request of a party to attend before a tribunal as a witness shall be in accordance with the table of allowances prescribed under the Supreme Court Rules 1970.

PART 6—SERVICE AND NOTICE OF HEARING**Service of process by parties**

79. (1) Except as otherwise provided by these Rules or unless the Registrar otherwise directs, service of all process shall be effected by the parties.

(2) Service of a summons or notice to show cause shall be in accordance with Rule 80 (a) or (b), 81 (a), (b) or (c), 82 (a), (b) or (c) or 83 (1) and (2), as the case may require.

(3) Except as otherwise provided by this Part or unless the tribunal has given a direction with regard to service, process other than a summons shall be served as specified in this Part.

Service upon individuals

80. Service of process upon any natural person shall be effected:

- (a) by leaving any document to be served with the person; or

- (b) if any document to be served is not accepted, by putting the document down in the presence of the person to be served and indicating its nature; or
- (c) by leaving any document with any other person apparently above the age of 14 years at the residence or usual place of business of the person; or
- (d) by posting any document to the person or leaving it at the address for service filed by the person; or
- (e) where any person has not filed an address for service, by posting any document to the person at the residence or usual place of business of that person.

Service upon corporations other than industrial organisations

81. Service of process upon a corporation other than an organisation incorporated under the Act shall be effected:

- (a) by leaving any document with the secretary or other principal officer of the corporation; or
- (b) by tendering any document to that secretary or principal officer after indicating its nature; or
- (c) by leaving any document with a person at the registered office of the corporation; or
- (d) where the corporation has filed an address for service, by posting any document to that secretary or principal officer at that address or by leaving it at that address; or
- (e) where the corporation has not filed an address for service, by posting any document to that secretary or principal officer at the registered office of the corporation; or
- (f) where provision is made by any other Act for the service of a document on the corporation concerned, by serving a copy of any document in accordance with the provision.

Service upon organisations

82. (1) In this Rule, “organisation” means any industrial or non-industrial organisation registered or recognised under the Act, any associations registered under Chapter 6 of the Act, and any State peak council.

(2) Service of process upon an organisation shall be effected:

- (a) by leaving any document with the secretary or principal officer of the organisation; or

- (b) by tendering any document to that secretary or principal officer after indicating its nature; or
- (c) by leaving any document with a person at the registered office of the organisation; or
- (d) where the organisation has filed an address for service, by posting any document to that secretary at that address or by leaving it at that address; or
- (e) where the organisation has not filed an address for service, by posting any document to that secretary or principal officer at the registered office of the organisation.

Service on solicitors or agents

83. (1) Where a party is represented by a solicitor or agent, any process other than the originating process may be served upon the solicitor or agent at the solicitor's or agent's office or at the solicitor's or agent's document exchange box provided by the Australian Document Exchange Pty Limited.

(2) Where a solicitor or agent makes a note on a copy of an originating process that service is accepted on behalf of any person, the document shall be taken to have been duly served on that person on the date on which the solicitor or agent makes the note or such earlier date of service as may be proved.

(3) The term solicitor in this Rule includes the solicitor's agent.

Time of service

84. (1) Every originating process, together with any accompanying affidavits, shall be served upon each of the persons thereby notified or summoned to appear promptly and at least 3 days before the day on which the matter is to be dealt with unless the tribunal gives leave for a shorter period of service.

(2) Any affidavit in answer to a served document may be filed and shall, unless otherwise directed by the tribunal, be served as soon as practicable but not later than the day preceding the hearing.

Substituted service

85. (1) Where personal or other service of any process is required by these Rules or otherwise and it is made to appear to the Registrar that such service cannot conveniently be effected, the Registrar may make

such order for substituted or other service, or for the substitution of notice by letter, facsimile message, other electronic means, public advertisement or otherwise, as may seem just.

(2) Such notice shall contain such particulars as the Registrar directs.

Service out of the State

86. (1) Service outside the State is to be as nearly as practicable in accordance with Part 10 of the Supreme Court Rules 1970.

(2) Leave to serve or confirmation of service may be given by the tribunal before which the proceedings are brought.

Notice of hearing

87. (1) Notice of the time and place for the mention or hearing of any matter (or any alternation of that time or place) may be given by a tribunal, or the Registrar on behalf of that tribunal, to the persons concerned, or their representatives, orally or by telephone, facsimile message or other electronic means.

(2) A person to whom notice has been given under subrule (1) shall be liable to attend or be represented at the mention or hearing of the matter as if summoned to appear.

PART 7—COMPULSORY CONFERENCE WITH RESPECT TO PUBLIC VEHICLES AND CONTRACTS OF CARRIAGE

Compulsory conference

88. (1) Notice pursuant to section 698 shall be given to the Registrar in the approved form or in writing, orally, or by telephone or facsimile message or by other electronic means. The person giving such notification shall state the parties affected by the question, dispute or difficulty and relevant particulars.

(2) When the notification is given other than in writing the person giving the notification shall promptly confirm the notification in writing.

(3) A copy of the notification (or its confirmation) shall be given promptly by the notifier to the other party or the representative of that party.

(4) A summons to a compulsory conference pursuant to section 698 shall be in the approved form.

PART 8—AFFIDAVITS**Time for swearing**

89. An affidavit for use in any proceedings may be sworn before or after the commencement of the proceedings.

Form

90. (1) An affidavit shall be made in the first person.

(2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, the person must certify in or below the jurat that:

- (a) the affidavit was read in the person's presence to the deponent; and
- (b) the deponent seemed to understand the affidavit.

(4) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (3) does not appear on the affidavit, the affidavit may not be used unless the tribunal is satisfied that the affidavit was read to the deponent and that the deponent seemed to understand it.

Alterations

91. (1) Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit, the affidavit may not be used without the leave of the tribunal unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any word or figures written on the erasure and signs or initials them.

(2) Subrule (1) applies to an account verified by affidavit as if the account were part of the affidavit.

Annexures and exhibits

92. (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

(3) An exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

Numbering and fastening of pages

93. The pages of an affidavit or an affidavit with an annexure or annexures shall:

- (a) be consecutively numbered in the top right hand corner; and
- (b) be securely fastened on the left hand side or corner.

Irregularity

94. An affidavit may, with the leave of the tribunal, be used notwithstanding any irregularity in its form.

Handing up affidavits

95. (1) An affidavit, unless required by or under an Act or by an order of a tribunal, may be filed in the Registry or may be handed up in the course of proceedings.

(2) An affidavit which has been served shall, before it is filed or handed up, bear a note by the person who served the same, indicating the time, place and manner of service.

Service

96. A party intending to use an affidavit shall serve it on each other interested party not later than a reasonable time before the occasion for using it arises.

Scandal, etc.

97. Where there is scandalous, irrelevant or otherwise oppressive matter in an affidavit, a tribunal may order that:

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

Cross-examination

98. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under subrule (1) shall be made to the party serving or proposing to use the affidavit.

(3) Where the attendance of a person is required under subrule (1), the affidavit may not be used unless the person attends or is dead or the tribunal grants leave to use it.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine the person.

PART 9—MISCELLANEOUS

Reckoning of time

99. (1) Where the last day for filing of any document with the Registry is a day on which the Registry is closed, such filing may be done on the next day on which the Registry is open.

(2) Where the period in question is 5 days or less and would include a day on which the registry is closed, that day shall be excluded.

Fixing time period

100. Where no time is fixed by these Rules for the taking of action in or in connection with any proceeding before a tribunal, the tribunal may fix the time within which such action is to be taken.

Form of evidence

101. In any proceeding before a tribunal, it may hear evidence either orally or by affidavit or both, whether notice or intention to call such oral evidence has been given or not.

Evidence in other proceedings

102. Subject to the Act, a party may, with the leave of the tribunal but subject to all just exceptions, read into proceedings before that tribunal evidence taken, or an affidavit filed, in other proceedings under the Act.

Correction and amendment of orders

103. (1) The Registrar may publish in the Industrial Gazette any correction which is necessary by reason of a clerical or printing error in an order or award as published.

(2) Where there is a mistake in an order or award, arising from an accidental slip or omission, the tribunal, on application by any party or of its own motion, may at any time correct the mistake or error.

(3) A tribunal, on application by any party or of its own motion may, at any time, for the purpose of carrying out its intention and to express accurately its meaning, correct any order or award.

EXPLANATORY NOTE

The object of this Regulation is to prescribe interim rules for the Industrial Relations Commission pending the making of rules by the Rule Committee of that Commission.
