



New South Wales

Industrial Relations Commission Amendment (Industrial Court) Rules 2024

under the

Industrial Relations Act 1996

The Rule Committee has made the following rules of the Commission under the *Industrial Relations Act 1996*.

JUSTICE I TAYLOR

President

Rule Committee of the Industrial Relations Commission

Explanatory note

The object of these rules is to make rules consequent on the re-establishment of the Industrial Court by the *Industrial Relations Amendment Act 2023*.

Industrial Relations Commission Amendment (Industrial Court) Rules 2024

under the

Industrial Relations Act 1996

1 Name of rules

These rules are the *Industrial Relations Commission Amendment (Industrial Court) Rules 2024*.

2 Commencement

These rules commence on 1 July 2024.

Schedule 1 Amendment of Industrial Relations Commission Rules 2022

[1] **Rules 1.3, definition of “approved form”, 2.1(3), 2.2, 2.4(1) and 6.5(1)**

Omit “Chief Commissioner” wherever occurring. Insert instead “President”.

[2] **Rule 1.3 Definitions**

Insert in alphabetical order—

conciliation certificate—see rule 7D.1.

contemnor means a person guilty or alleged to be guilty of contempt of the Commission.

Industrial Court means the Commission in Court session.

online registry means the electronic case management system available on the Commission website and established under the *Electronic Transactions Act 2000*, Schedule 1, clause 2.

[3] **Rule 1.6**

Omit the rule. Insert instead—

1.6 Application of UCPR

Schedule 1 sets out the UCPR provisions that do not apply to—

- (a) the Commission when not in Court Session, and
- (b) the Industrial Court.

Note— The UCPR, rule 1.5 provides that the UCPR generally apply to proceedings in the Commission. The UCPR, rule 1.7 provides that these rules prevail over the UCPR.

[4] **Rule 1.7A**

Insert after rule 1.7—

1.7A Application of Rules to WHS prosecutions

Parts 3 and 4, except for rule 4.6A, do not apply to criminal proceedings under the *Work Health and Safety Act 2011*.

Note— See Part 7C for rules about proceedings for work health and safety prosecutions.

[5] **Rule 2.4 Use of approved forms**

Insert after rule 2.4(3)—

- (4) The *Commission Form 1* or *Court Form 4—Application, General Form* must be used for the filing of a document if—
 - (a) these rules do not otherwise require an approved form for the filing of the document, or
 - (b) an approved form is required but there is no approved form.

[6] **Rule 2.5**

Omit the rule. Insert instead—

2.5 Filing of documents in proceedings

- (1) A document in proceedings before the Commission may be filed as follows—
 - (a) in person,

- (b) by post,
 - (c) by using the Commission's online registry,
 - (d) by email if the document cannot be filed in accordance with paragraph (c),
 - (e) another way with leave of the Commission.
- (2) A document filed in person, or by post, must include the number of copies specified in Schedule 2, unless the Commission directs differently.
- (3) The Commission may refuse to accept a document for filing—
- (a) if the document is not filed in accordance with—
 - (i) the approved form, or
 - (ii) these rules, or
 - (iii) a relevant practice note, or
 - (b) if a fee required for the filing of the document has not been paid.

[7] Part 3 Commencement of proceedings

Insert after the heading to the part—

Note— This part provides rules for the commencement of proceedings generally. Parts 7A–7D provide for rules specific to the commencement of certain types of proceedings and prevail to the extent of an inconsistency with this part.

[8] Rule 3.2

Omit the rule. Insert instead—

3.2 Matters initiated by the Commission

- (1) The Commission may do the following if the Commission decides to act on its own initiative in relation to a matter not otherwise in proceedings before it—
- (a) direct parties by summons to attend and confer,
 - (b) direct proceedings to be commenced by—
 - (i) a summons to show cause, or
 - (ii) written notice issued by the Registrar.
- (2) The summons to attend and confer may be given by the Registrar to the persons—
- (a) by written notice, or
 - (b) if necessary, by notification by telephone.

[9] Part 4 Conduct of proceedings

Insert after the heading to the part—

Note— This part provides rules generally for the conduct of proceedings. Parts 7A–7D provide for rules specific to the conduct of certain types of proceedings and prevail to the extent of an inconsistency with this part.

[10] Rule 4.6A

Insert after rule 4.6—

4.6A Evidence by telephone, video link or other communication

If the Commission orders, evidence and submissions may be received by—

- (a) telephone, or
- (b) video link, or

(c) another form of communication.

[11] Rule 4.7 Costs generally

Insert before rule 4.7(1)—

(1A) This rule applies to costs in civil proceedings before the Commission when not in Court session.

Note— Costs in civil proceedings before the Industrial Court are dealt with in the UCPR, Part 42.

[12] Rule 5.6 Summons

Insert after rule 5.6(4), before the note—

(5) A summons for production or evidence must be signed by a member of the Commission or the Registrar, unless the issuing officer of the summons authenticates a sufficient number of copies of the summons for service and proof of service by—

- (a) sealing with the seal of the Commission, or
- (b) authenticating in another way.

(6) A summons for production or to give evidence is taken to have been issued on the summons being sealed or authenticated in accordance with subrule (5).

[13] Rule 7.4A

Insert after rule 7.4—

7.4A Notice of cross-appeal

An application for leave to cross-appeal and cross-appeal must be filed and served within—

- (a) 14 days after service on the respondent of the application commencing the appeal, or
- (b) a further period allowed by the Commission.

Note— A respondent to an appeal who is entitled to cross-appeal should file a notice of cross-appeal only if the respondent wishes to vary the decision below. If the respondent wishes to have the decision below affirmed on grounds other than those relied on by the court below, the respondent should file and serve a notice of contention as provided by rule 7.5 rather than a notice of cross-appeal. If the respondent objects to the competency of the appeal, the respondent should file and serve a notice of objection to the competency of the appeal as provided by the UCPR, rule 51.41.

[14] Rule 7.9

Insert after rule 7.8—

7.9 Security for costs

- (1) No security for costs of an appeal to the Industrial Court is required, unless, in special circumstances, the Court orders that security be given.
- (2) This rule does not affect the powers of the Industrial Court under the UCPR, Part 42.

[15] Parts 7A—7D

Insert after Part 7—

Part 7A Proceedings for recovery of money and civil penalties

7A.1 Application

- (1) This part applies to proceedings for—
 - (a) an order of payment of money, or
 - (b) a civil penalty, or
 - (c) both.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

7A.2 Commencement of proceedings

- (1) An application to commence proceedings must be commenced in the approved form.
- (2) The Commission may require—
 - (a) the applicant to file a statement of claim, and
 - (b) the respondent to file a reply.
- (3) If the written consent of the person for whom the money is payable is required in accordance with the Act, section 369(1)—
 - (a) the person's written consent must accompany the application, or
 - (b) if consent is not available, proof of the consent may, by leave of the Commission, be given at the hearing of the proceedings.

7A.3 Conduct of proceedings

- (1) Conciliation must be attempted before a hearing for the proceedings.
- (2) The conciliation may be conducted by a non-judicial member of the Commission.

7A.4 Small claims during other Commission hearings

An application under the Act, section 380 for proceedings to be dealt with in accordance with the small claims procedure under the Act, section 379—

- (a) must be in the approved form unless the Commission otherwise orders, and
- (b) must be served promptly on the other parties to the proceedings.

Part 7B Proceedings for contravention of dispute orders and offences under the Act

7B.1 Application

- (1) This part applies to the following—
 - (a) proceedings for a contravention of a dispute order under the Act, section 139,
 - (b) criminal proceedings for an offence under the Act.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

7B.2 Commencement of proceedings

- (1) Proceedings must be commenced by an application for summons.
- (2) The application must state the following—
 - (a) the name and address of the person bringing the proceedings (the *applicant*),
 - (b) the capacity in which the applicant is taking the proceedings,
 - (c) the name and address of the person against whom the proceedings are brought (the *respondent*),
 - (d) the nature of the alleged contravention or offence.
- (3) The Industrial Court may require the applicant to file, in support of the application—
 - (a) an affidavit verifying the allegation made in the application, and
 - (b) a minute of the summons sought.

7B.3 Issue of summons

If the Registrar is satisfied the application for summons has been properly filed, the Registrar must issue a summons directing the respondent to appear before the Industrial Court on the day and at the place specified.

7B.4 Service of summons and affidavit verifying

- (1) The applicant must serve the summons and a copy of the affidavit verifying the service not later than 5 days before the return date of the summons unless the Industrial Court gives leave for a shorter period of service.
- (2) Service must be carried out in accordance with the UCPR, Part 10.

Part 7C Proceedings for work health and safety prosecutions

7C.1 Application

This part applies to criminal proceedings in relation to the *Work Health and Safety Act 2011*.

7C.2 Commencement and conduct of proceedings generally

- (1) Proceedings must be commenced by an application, in the approved form, for the issue of a summons.
- (2) The summons must be lodged with the application.
- (3) Proceedings for a prosecution under the *Work Health and Safety Act 2011* must be commenced and conducted in accordance with the practice notes.
- (4) Service of documents in the proceedings must be effected in the same way as service of documents in civil proceedings under the UCPR, Part 10 subject to this part.

7C.3 Order for defendant's appearance

- (1) An application for an order under the *Criminal Procedure Act 1986*, section 246, must state the following—
 - (a) the name and address of the person bringing the proceedings (the *prosecutor*),

- (b) the capacity in which the prosecutor is taking the proceedings,
 - (c) the name and address of the person against whom the proceedings are brought (the *defendant*),
 - (d) the statutory provision, the Act and section, under which the defendant is alleged to have committed an offence,
 - (e) the nature of the alleged offence.
- (2) The Industrial Court may require the prosecutor to file, in support of the application—
- (a) an affidavit verifying the allegations made in the application, and
 - (b) a minute of the order sought.

Part 7D Proceedings for unfair contracts

7D.1 Definition

In this part—

conciliation certificate means the conciliation certificate issued under rule 7D.6(1).

7D.2 Application

- (1) This part applies to proceedings for an order under the Act, section 106.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

7D.3 Commencement of proceedings

- (1) An application to the Industrial Court to exercise the powers conferred on it by the Act, section 106 must be in the approved form.
- (2) The application must—
 - (a) specify succinctly the matters of fact and law that form the basis of the application, and,
 - (b) contain sufficient information by way of summary to assist the Industrial Court in attempting to settle the matter by conciliation.
- (3) The application must be served on the respondent unless the Registrar orders it not to be served on the respondent.
- (4) The respondent may file and serve a reply, in the approved form—
 - (a) within 21 days after the expiry of the time limited for appearance, and
 - (b) the reply must—
 - (i) answer each of the matters raised in the application, and
 - (ii) specify succinctly the matters of fact and law on which the respondent will rely in opposition to the application, and
 - (iii) contain sufficient information by way of a summary to assist the Industrial Court in attempting to settle the matter by conciliation.
- (5) The application and the respondent's reply is not required to specify the evidence by which the facts are to be proved.
- (6) The applicant may file and serve a response, in the approved form—
 - (a) within 14 days after the respondent's reply is filed, and
 - (b) the response must answer each of the matters specified in the reply.

- (7) An application, reply or response that is filed or served under this rule must be accompanied by an affidavit verifying the matters of fact set out in the application.
- (8) If a party is a corporation, an affidavit may be sworn by any officer or employee of the corporation who is able to verify the matters of fact relied on by the corporation.

7D.4 Allocation generally

The President may allocate conciliation and judicial hearings separately.

7D.5 Conduct of conciliation conferences

- (1) Conciliation must be attempted by way of a conciliation conference.
- (2) The conciliation conference must not occur unless parties are given reasonable notice of the conciliation conference.
- (3) The conciliation conference must be conducted by way of a structured process in which the Commission attempts to assist the parties—
 - (a) to communicate effectively with each other, and
 - (b) to reach agreement on the issues in dispute.
- (4) Schedule 3, Part 1—
 - (a) applies to the conduct of the conciliation, and
 - (b) may be varied or replaced by practice notes issued under the *Civil Procedure Act 2005*, section 15.

7D.6 Certificate of result of conciliation

- (1) A member of the Commission conducting a conciliation conference must issue a **conciliation certificate** that indicates either of the following if it has occurred during the conference—
 - (a) the matters in dispute are settled,
 - (b) the member has formed the opinion that all reasonable attempts to settle the matter by conciliation have been made without success.
- (2) The member of the Commission must not proceed further unless the matter has also been allocated to that member for orders, directions or determination.

7D.7 Allocation of matter after certificate issued

- (1) A matter must be allocated to a judicial member for orders to be made if—
 - (a) a conciliation certificate for the matter has been issued in relation to rule 7D.6(1)(a) and the settlement requires orders to be made, and
 - (b) the conference has not been conducted by a judicial member.
- (2) A matter must be allocated to a judicial member for determination if a conciliation certificate for the matter is issued in relation to rule 7D.6(1)(b).

7D.8 Conduct of post-conciliation proceedings

- (1) Schedule 3, Part 2 applies to a matter to which a conciliation certificate under rule 7D.6(1)(b) has been issued.
- (2) Schedule 3, Part 2—
 - (a) applies unless the Commissions directs otherwise, and

- (b) may be varied or replaced by practice notes issued under the *Civil Procedure Act 2005*, section 15.

[16] Part 8A

Insert after Part 8—

Part 8A Contempt of the Commission

Note— Contempt of the Commission can be either contempt of the Commission when not in Court Session or contempt of the Commission when in Court Session, the Industrial Court. But proceedings for contempt may only be taken before the Industrial Court. See the Act, section 180.

Division 1 Contempt in the face or hearing of the Commission

8A.1 Arrest

If it is alleged, or it appears to the Industrial Court on its own view, that a person is guilty of contempt, committed in the face of the Commission or in the hearing of the Commission, the Court may—

- (a) give an oral direction that the contemnor be brought before the Court, or
- (b) issue a warrant for the arrest of the contemnor.

8A.2 Charge, defence and determination

- (1) When the contemnor is brought before the Industrial Court, the Court must—
 - (a) inform the contemnor of the contempt charge, and
 - (b) give the contemnor an opportunity to defend the charge.
- (2) After hearing the defence, the Industrial Court must—
 - (a) determine the matter of the charge, and
 - (b) make an order for the punishment or discharge of the contemnor.

8A.3 Interim custody

- (1) Before the Industrial Court determines the matter of the charge, the Industrial Court may direct the contemnor—
 - (a) be kept in custody as the Court determines, or
 - (b) be released.
- (2) The Court may make a direction for the release of the contemnor on specified terms, including that the contemnor give security for a sum directed by the Court for the contemnor's appearance, in person, to answer the charge.

Division 2 Motion or proceedings for punishment

8A.4 Application

This division applies to proceedings for contempt of the Commission other than for proceedings to which Division 1 applies.

8A.5 Commencement of proceedings by persons other than the Court

- (1) For contempt committed in connection with proceedings in the Commission—
 - (a) an application for punishment for the contempt must be made by notice of motion in the proceedings, but

- (b) if separate proceedings for punishment of the contempt are commenced, the separate proceedings may be continued unless the Industrial Court otherwise orders.
- (2) For contempt committed other than in connection with proceedings in the Commission—
 - (a) proceedings for punishment of the contempt must be commenced by summons, but
 - (b) if an application for punishment of the contempt is made by motion on notice in any proceedings, the application may be heard and disposed of in those proceedings, unless the Industrial Court otherwise orders.

8A.6 Motion or proceedings commencing by registrar on behalf of Court

- (1) If it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court or of another court, the Court may, by order, direct the registrar to—
 - (a) apply by motion for punishment of the contempt, or
 - (b) commence proceedings for punishment of the contempt.
- (2) Subrule (1) does not affect the right of another person to apply by motion for, or to commence proceedings for, punishment of contempt.

8A.7 Statement of charge

A statement (a *statement of charge*) specifying the contempt of which the contemnor is alleged to be guilty must be included, or filed, with—

- (a) the notice of motion, or
- (b) the summons.

8A.8 Evidence

- (1) The evidence in support of the charge must be by affidavit.
- (2) The Industrial Court may, on terms, permit evidence to be given other than by affidavit.

8A.9 Service

The following must be served personally on the offender—

- (a) the notice of motion or summons,
- (b) the statement of charge,
- (c) the affidavits.

8A.10 Arrest

- (1) This rule applies if—
 - (a) a notice of motion for punishment of contempt has been filed, or
 - (b) proceedings have been commenced for punishment of a contempt.
- (2) If it appears to the Industrial Court that the contemnor is likely to abscond or withdraw from the jurisdiction, the Court may issue a warrant for the following until the contemnor is brought before the Court to answer the charge—
 - (a) for the offender's arrest,
 - (b) for the offender's detention in custody.

- (3) The warrant applies unless the contemnor gives security in the manner and the sum directed by the Court for the contemnor's appearance, in person, to answer the charge and to submit to the judgment or order of the Court.

[17] Schedules 1–3

Insert after Part 9—

Schedule 1 Application of UCPR

Rule 1.6

UCPR provisions that do not apply to Commission when not in Court session

Part 5

Part 6

Part 16

Part 17

Part 20

Part 21

Part 22

Part 23

Part 31, Division 1, except rules 31.1, 31.2, 31.3, 31.4, 31.11, 31.12 and 31.16A

Part 31, Division 2

Part 32

Part 34

Part 37

Part 38

Part 39

Part 42

Part 43

Part 46

UCPR provisions that do not apply to Industrial Court

Part 6

Part 16

Part 20, except for Division 4 (but Division 4 does not apply until after conciliation has been attempted under the Act, section 109)

Part 23, Divisions 1 and 2

Part 37

Part 38

Part 39

Part 42, Division 2

Part 43

Schedule 2 Number of copies to file in proceedings

Rule 2.5(3)

Note— Parties will also need a copy for themselves, and, if the document has to be served on other parties, enough copies to serve each party plus an additional copy to attach to an affidavit of service.

Type of proceedings	Number of copies
General application	original plus 1 copy, unless otherwise required in the approved form
Application for award, contract determination, enterprise agreement or contract agreement	original plus 1 copy
Application for relief from unfair dismissal	original plus 1 copy
Application for the recovery of money or civil penalties under the <i>Industrial Relations Act 1996</i> , Chapter 7	original plus 1 copy
Application for the recovery of money or civil penalties under the <i>Fair Work Act 2009</i> of the Commonwealth	original plus 1 copy
Application under the <i>Criminal Procedure Act 1986</i>	original plus 1 copy
Applications under the <i>Work Health and Safety Act 2011</i>	original plus 1 copy
Notice of an intention to commence mutual gains bargaining under the Act, section 129N	original plus 1 copy
Written notice declaring mutual gains bargaining unresolved under the Act, section 129P(3)	original plus 1 copy
Dispute notification	original plus 1 copy
Appeals	original plus 3 copies
Matters before a Full Bench	original plus 3 copies, or, if the Full Bench consists of more than 3 members, the same number of copies as members of the Full Bench
Contract of Carriage Tribunal	original plus 3 copies

Schedule 3 Conduct of unfair contract proceedings

Part 1 Conciliations

Rule 7D.5

- 1 Each party may be represented, but only by a person—
 - (a) who is fully aware of the matter, and
 - (b) who has the full authority to settle the matter.
- 2 Each party must attend the conciliation with information on—
 - (a) the costs incurred by the party to date, and

- (b) if the matter were to proceed to a hearing—
 - (i) the estimate of the number of hearing days that would be involved, and
 - (ii) the estimate of the costs the party would incur.
- 3** The applicant must file and serve a statement on the mitigation of damage, or loss, not less than 7 days before the date fixed for the conference.
- 4** In the week before the conference, the parties must consult with each other to clearly identify the issues and matters in dispute.
- 5** If a party contends that a term of a written contract is an issue, the party must file and serve a copy of the following not less than 7 days before the date fixed for the conference—
 - (a) the contract, and
 - (b) a brief summary on the nature of the issue.
- 6** If a party believes there is a matter of fact or law not identified in the pleadings that would require determination if the matter were to proceed to a hearing, the party must—
 - (a) document the matter, and
 - (b) file and serve a copy of the relevant documentation not less than 7 days before the date fixed for the conference.

Part 2 Post–conciliation proceedings

Rule 7D.8

- 1** The applicant must file and serve the following—
 - (a) within 14 days after the certificate is issued—amendments of the originating process,
 - (b) within 28 days after the certificate is issued—all affidavits the applicant will rely on in the proceedings, other than those referred to in paragraph (c),
 - (c) within 14 days after the respondent’s affidavits are filed—affidavits in response to the respondent’s affidavits,
- 2** The respondent must file and serve the following—
 - (a) within 14 days after an amendment to the originating process is served—objections to the amendment by way of notice of motion,
 - (b) within 28 days after an amendment to the original process is served—all affidavits the respondent will rely on in the proceedings.
- 3** Each party must—
 - (a) within 14 days after all affidavits have been filed—serve on the other parties a list of additional documents, other than those exhibited in accordance with section 5, on which it intends to rely by way of evidence, and
 - (b) within 28 days after all affidavits have been filed—advise all other parties as to which of the documents will be the subject of consent to becoming evidence, and

- (c) within 42 days after all affidavits have been filed—file and serve a supplementary court bundle.
- 4 Each witness' evidence in chief must be way of clearly paginated affidavits and annexes.
- 5 Documents referred to in a party's affidavit must be exhibited at the time of swearing in a bundle (a *court bundle*) that includes a list of all documents on which the party intends to rely by way of evidence in the proceedings.
- 6 A party's court bundle must—
 - (a) be paginated and include an index, but
 - (b) is not required to include documents contained in another party's court bundle if the reference to the document is made in the index.
- 7 A party seeking to rely on the oral evidence of a person from whom an affidavit cannot be obtained must, within the time specified for the filing of the party's affidavit material, give to all other parties a notice—
 - (a) stating the name of the intended witness, and
 - (b) containing an outline of the evidence intended to be adduced.
- 8 Summonses for the production of documents may be made returnable before the Registrar on a date that the Registrar conducts a list.
- 9 The following are to be dealt with by a duty judge on an interlocutory basis—
 - (a) applications for orders other than for photocopy access,
 - (b) claims for privilege,
 - (c) other similar matters.