



New South Wales

# Industrial Relations Commission (Amendment No 1) Rules 2024

under the

Industrial Relations Act 1996

The Rules 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 further rules as a consequence of the re-establishment of the Industrial Court.

## **Industrial Relations Commission (Amendment No 1) Rules 2024**

under the

Industrial Relations Act 1996

### **1 Name of rules**

These rules are the *Industrial Relations Commission (Amendment No 1) Rules 2024*.

### **2 Commencement**

These rules commence on the day on which they are published on the NSW legislation website.

## Schedule 1 Amendment of Industrial Relations Commission Rules 2022

[1] **Rule 1.3**

Insert in alphabetical order—

*Fair Work Act*, for Part 8—see rule 8.1.

*FWA small claims application*, for Part 8—see rule 8.5(2).

[2] **Rule 1.6 Application of UCPR**

Omit “when not in Court Session”. Insert instead “, when it is not in Court Session”.

[3] **Rule 1.7A**

Omit the rule. Insert instead—

**1.7A Application of Rules to WHS prosecutions**

The following do not apply to criminal proceedings under the *Work Health and Safety Act 2011*—

(a) Part 3 of these rules,

(b) Part 4 of these rules, except rules 4.6A and 4.8.

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

[4] **Rule 4.7 Costs generally**

Omit “when not in Court session” from rule 4.7(1A). Insert instead “, when it is not in Court Session”.

[5] **Rule 4.8**

Insert after rule 4.7—

**4.8 Interpreter for criminal proceedings**

(1) This rule applies to an interpreter whose services are provided by arrangement with the Registrar for the assistance of the Industrial Court in the translation of evidence given in criminal proceedings.

(2) This rule does not apply to an interpreter who is engaged to assist a party.

(3) The interpreter must, when attending at the Court, report to—

(a) the Sheriff’s Officer in charge at the Court, or

(b) the Associate to the presiding judicial member.

(4) The interpreter must not, without the direction or permission of the presiding judicial member, make the interpreter’s services available to, or communicate with—

(a) a party to the proceedings, or

(b) a representative of the party.

[6] **Part 5, Division 1A**

Insert before Part 5, Division 1—

## **Division 1A Mutual gains bargaining**

### **5.1A Notice of intention to commence bargaining**

For the Act, section 129N(1), the written notice must be—

- (a) in the approved form, and
- (b) given to the Registrar in person, by post or by electronic communication.

### **5.1B Consultation with Commission before declaring bargaining unresolved**

For the Act, section 129P(2), a person must consult with the Commission by—

- (a) preparing and giving to the Commission a draft of the written notice and report referred to in the Act, section 129P(3), and
- (b) then discussing the matter with the President or the President's delegate.

### **5.1C Notice for declaring bargaining unresolved**

For the Act, section 129P(3), the written notice must be—

- (a) in the approved form, and
- (b) given to the Registrar in person, by post or by electronic communication.

#### **[7] Rules 5.1 and 6.1**

Omit “Division” wherever occurring. Insert instead “division”.

#### **[8] Rule 5.6 Summonses**

Insert after 5.6(6)—

- (7) A party to proceedings may apply to the Commission, when it is not in Court Session, for an order permitting the party to issue notices to produce documents before or during a hearing in accordance with one or both of the following—
  - (a) the UCPR, Part 21, Division 2,
  - (b) the UCPR, Part 34.

#### **[9] Rule 6.8 Applications for consent awards**

Omit rule 6.8(1). Insert instead—

- (1) An application for a consent award must be supported by an affidavit setting out—
  - (a) the way in which the consent award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value, and
  - (b) the reasons why the making of the consent award is in the public interest having regard to the matters set out in the Act, section 146(2).

#### **[10] Part 7, Division 1**

Insert before rule 7.1—

### **Division 1 General**

**[11] Rule 7.10**

Insert after rule 7.9—

**7.10 Stated cases**

If an Act or law requires or allows a case to be stated to the Industrial Court, the case must be stated in accordance with the direction of a judicial member to whom an application must be made for the purpose.

**[12] Part 7, Division 2**

Insert after rule 7.10, as inserted by Schedule 1[11]—

**Division 2 Appeals from Local Court**

**7.11 Application of division**

This division applies to proceedings in the Industrial Court on appeal from the Local Court.

**7.12 Notice to Local Court**

The appellant, on filing a notice to the Industrial Court for leave to appeal, must give notice of the appeal in the approved form to a registrar of the Local Court located where the proceedings on appeal were heard.

**7.13 Local Court registrar to inform Industrial Court**

A registrar of the Local Court must, as soon as practicable after receiving a notice from an appellant in accordance with rule 7.12—

- (a) give the Registrar the following information from the proceedings on appeal—
  - (i) if the appellant is an individual—
    - (A) the full name and other names recorded in the proceedings by which the appellant is known, and
    - (B) the date of birth and last known address of the appellant,
  - (ii) if the appellant is a corporation—the registered name, registered address and ACN of the appellant,
  - (iii) the offence for which the appellant was convicted,
  - (iv) if known to the registrar of the Local Court, the full name, address and telephone number of a solicitor who acted for the appellant in the proceedings,
  - (v) the full name and address of the informant, and if applicable, the title of the office of the informant,
  - (vi) the location of the transcription centre to which the tapes of the proceedings were sent, and
- (b) request a transcript of the proceedings on appeal be prepared.

**7.14 Industrial Court to inform Local Court of result**

The Registrar must, as soon as practicable, notify the Magistrate of the Local Court who made the decision for the proceedings on appeal of—

- (a) the judgment in the appeal proceedings, or
- (b) a decision in the appeal proceedings that has the effect of the disposal of the proceedings.

**[13] Rules 7A.1, 7B.1, 7C.1 and 7D.2, headings**

Insert “**of part**” after “**Application**” wherever occurring.

**[14] Rule 7C.2A**

Insert after 7C.2—

**7C.2A Notice under the Evidence Act 1995, ss 67 and 99**

The UCPR, rule 31.5 applies to the proceedings.

**[15] Rule 8.1**

Omit the rule. Insert instead—

**8.1 Definitions**

In this part—

*Fair Work Act* means the *Fair Work Act 2009* of the Commonwealth.

*FWA small claims application*—see rule 8.5(2).

*small claims application* means—

- (a) a small claims application within the meaning of the Act, section 379, or
- (b) a FWA small claims application.

**[16] Rule 8.3 Conduct of conciliation for small claims applications**

Insert before rule 8.3(1)—

- (1A) This rule applies only to small claims applications within the meaning of the Act, section 379.

**[17] Rule 8.3(2)**

Omit “Each party may be represented” from the subrule.

Insert instead “Subject to the Act, section 166(2), each party may be represented”.

**[18] Rule 8.4 Small claims proceedings**

Omit rule 8.4(1). Insert instead—

- (1) The procedures to be followed at a hearing in proceedings for a small claims application must be in accordance with a determination, if any, of the Commission.

**[19] Rule 8.5**

Insert after rule 8.4—

**8.5 Fair Work Act matters dealt with as small claims applications**

- (1) A person who makes an application to the Industrial Court for an order under the Fair Work Act, section 545(3) may request that the application be dealt with in accordance with this part and the relevant practice note if the amount sought under the order is less than \$100,000.
- (2) If the Commission grants the request, the application is a *FWA small claims application*.

**[20] Part 8A, note**

Omit “when not in Court Session”. Insert instead “, when it is not in Court Session,”.

**[21] Rule 8A.4, heading**

Insert “**of division**” after “**Application**”.

**[22] Rule 9.1 Stated case**

Omit the rule.