



New South Wales

Industrial Relations Commission Amendment Rules 2025

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 objects of these rules are as follows—

- (a) to enable a party appearing personally in proceedings before the Industrial Relations Commission to appoint an Australian legal practitioner or agent to act in the proceedings on the party's behalf,
- (b) to require a case stated to the Industrial Court, unless the Court otherwise orders, to be in writing and signed by the member making the reference,
- (c) to make provision relating to criminal appeals to the Full Bench of the Industrial Court.

Industrial Relations Commission Amendment Rules 2025

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Industrial Relations Act 1996

1 Name of rules

These rules are the *Industrial Relations Commission Amendment Rules 2025*.

2 Commencement

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

Schedule 1 Amendment of Industrial Relations Commission Rules 2022

[1] Rule 1.3 Definitions

Insert in alphabetical order—

appellant, for Part 7, Division 3—see rule 7.16.

Full Bench, for Part 7, Division 3—see rule 7.15.

notice of appeal, for Part 7, Division 3—see rule 7.16.

notice of intention to appeal, for Part 7, Division 3—see rule 7.16.

trial judge, for Part 7, Division 3—see rule 7.16.

[2] Rule 4.1 Entering an appearance

Insert after rule 4.1(4)—

- (5) If a party appearing personally in proceedings before the Commission appoints an Australian legal practitioner or an agent to act in the proceedings on the party's behalf, the party must file and serve a notice of appearance for the legal practitioner or agent entering an appearance.

Note— The Act, section 166(2) provides that, in certain proceedings, a party requires leave of the Commission to be represented by an Australian legal practitioner or an agent who is an industrial agent.

[3] Part 7 Appeals

Insert after Part 7, heading—

Note— The Act, Part 7 applies provisions of the *Crimes (Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912* to certain appeals to which this part applies. A reference in this part to the *Criminal Appeal Act 1912* is to that Act as applied by the Act, section 196.

[4] Rule 7.1A

Insert before rule 7.1—

7.1A Application of division

The following rules do not apply to an appeal to which Division 3 applies—

- (a) rule 7.1,
- (b) rules 7.4–6.

[5] Rule 7.1, heading

Omit the heading. Insert instead—

7.1 Notice of appeal

[6] Rule 7.2 Application for stay of proceedings

Insert after rule 7.2(1)—

- (1A) An appellant who has been ordered by the Commission in criminal proceedings to pay a monetary sum may apply to the Commission for an order suspending payment pending the determination by the Full Bench of the Commission of an appeal or application for leave to appeal under Division 3.
- (1B) The Commission may make an order suspending payment on terms the Commission considers just.

[7] Rule 7.3A

Insert after rule 7.3—

7.3A Leave required for certain matters not included in notice of appeal

- (1) An appellant must apply for the leave of the Commission if—
 - (a) the appellant is intending to rely on a ground of appeal not stated in the notice of appeal, or
 - (b) the appellant is intending to rely on a ground of appeal stated in the notice of appeal and particulars have not been given in relation to the ground.
- (2) On an application, the Commission may—
 - (a) refuse leave, or
 - (b) grant leave on terms the Commission considers appropriate.

[8] Rule 7.5 Notice of contention

Insert “on the appellant” after “served” in rule 7.5(3).

[9] Rule 7.10 Stated cases

Insert at the end of rule 7.10—

- (2) The case must be stated in writing and be signed by the member making the reference.
- (3) The Registrar must send a copy of the case stated to—
 - (a) the Australian legal practitioner representing each of the named parties, or
 - (b) if no Australian legal practitioner is representing a named party—the named party.
- (4) Subrules (2) and (3) apply unless the Industrial Court otherwise orders.

[10] Part 7, Division 3

Insert after Part 7, Division 2—

Division 3 Criminal appeals to Full Bench of Industrial Court

Subdivision 1 Preliminary

7.15 Application of division

This division applies to appeals to the Full Bench of the Industrial Court (the *Full Bench*) in relation to criminal proceedings taken before a judicial member of the Commission.

7.16 Definitions

In this division—

appellant includes a person who files—

- (a) a notice of intention to appeal, and
- (b) a notice of appeal.

notice of appeal includes a notice of application for leave to appeal.

notice of intention to appeal includes a notice of intention to apply for leave to appeal.

trial judge, in relation to an appeal or proposed appeal to the Full Bench, means the judicial member of the Commission who presided over the trial.

Subdivision 2 Notices of intention to appeal

7.17 Notice of intention to appeal

A notice of intention to appeal—

- (a) must be in the approved form, and
- (b) must be signed by the appellant or an Australian legal practitioner representing the appellant, and
- (c) has effect for a period of 3 months after the day it is filed.

7.18 Application for extension of time

- (1) An application to extend the time to give a notice of intention to appeal must be signed by the appellant or an Australian legal practitioner representing the appellant.

Note— The *Criminal Appeal Act 1912*, section 10(1)(a) requires an appellant to give notice of intention to appeal, or notice of intention to apply for leave to appeal, within 28 days after the person is convicted or sentenced.

- (2) The Registrar may exercise the power of the Commission under the *Criminal Appeal Act 1912*, section 10(1)(b) to extend the time to give a notice of intention to appeal.

7.19 Amended notice of intention to appeal

- (1) This rule applies if—
 - (a) a notice of intention to appeal a conviction or sentence, but not both, has been filed, and
 - (b) the appellant intends subsequently to appeal both the conviction and sentence.
- (2) The appellant must file—
 - (a) an amended notice of intention to appeal in the approved form, and
 - (b) if required, an application for an extension of time.
- (3) The amended notice of intention to appeal—
 - (a) replaces the original notice of intention to appeal, and
 - (b) has effect for the remainder of the period the original notice of intention to appeal would have had effect.

7.20 Registrar to forward notices of intention to appeal

The Registrar must send the following to the respondent—

- (a) the notice of intention to appeal as filed,
- (b) if the appellant files an amended notice under rule 7.19—the notice of intention to appeal as amended.

Subdivision 3 Notices of appeal

7.21 Notice of appeal

- (1) A notice of appeal must be filed in the approved form.
- (2) A notice of appeal against a conviction or sentence by a defendant must be filed—
 - (a) if a notice of intention to appeal has been given—during the period in which the notice of intention to appeal has effect, or
 - (b) otherwise—within 3 months after the conviction or sentence.
- (3) For an appeal against a sentence under the *Criminal Appeal Act 1912*, section 5D, a notice of appeal must be filed within 28 days after the sentence.

7.22 Effect of incomplete notice of appeal or application for leave to appeal

A notice of appeal against a conviction or sentence not accompanied by all the documents required by the approved form has effect as a notice of intention to appeal.

7.23 Service of notices of appeal

- (1) A notice of appeal, as filed, must be served on—
 - (a) the respondent, and
 - (b) for an appeal under the *Criminal Appeal Act 1912*, section 5D or 5DA, the last known Australian legal practitioner representing the respondent.
- (2) Service of a notice of appeal filed by a prosecutor must be effected by personal service if—
 - (a) the defendant does not have legal representation, or
 - (b) the appeal is under the *Criminal Appeal Act 1912*, section 5D or 5DA.

7.24 Notice of contention

- (1) This rule applies if a respondent to an appeal to which this division applies seeks to contend the decision below should be affirmed on grounds other than those relied on below.
- (2) The respondent must file a notice of contention stating, briefly but specifically, the grounds relied on in support of the contention.
- (3) The notice must be filed and served on the appellant within—
 - (a) 14 days after service on the respondent of the application commencing the appeal, or
 - (b) a further period allowed by the Commission.

Subdivision 4 Conduct of proceedings

7.25 Abandonment of ground of appeal

An appellant intending to abandon a ground of appeal stated in the notice of appeal, or relied on with the leave of the Full Bench, must file a notice in the approved form abandoning the ground.

7.26 Exclusion of certain matters as grounds for appeal without leave

A ground of appeal or an application for leave to appeal relating to a decision as to the admission or rejection of evidence given by the trial judge may only be allowed—

- (a) if objection was taken to the decision by the appellant at the trial, or
- (b) with leave of the Full Bench.

Subdivision 5 Resolution of proceedings

7.27 Abandonment of proceedings

- (1) An appellant may abandon an appeal or application for leave to appeal by filing a notice in the approved form.
- (2) On receipt of the notice—
 - (a) for an appeal—the appeal is taken to have been dismissed by the Full Bench, or
 - (b) for an application for leave to appeal—the application is taken to have been refused by the Full Bench.

7.28 Refund of penalty or costs paid

Unless the Full Bench orders differently, a person who is successful in an appeal is entitled to be repaid money the person has been ordered by the trial judge to pay as penalty or costs.