

# Industrial Relations (General) Regulation 2001

[2001-671]



New South Wales

## Status Information

### Currency of version

Historical version for 30 June 2006 to 30 June 2006 (accessed 17 July 2024 at 22:11)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Industrial Relations (General) Amendment (Fees) Regulation 2006 (364)* (GG No 84 of 30.6.2006, p 4834) (not commenced — to commence on 1.7.2006)

### Authorisation

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File last modified 30 June 2006

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New South Wales

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# Industrial Relations (General) Regulation 2001



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Industrial Relations (General) Regulation 2001*.

### 2 Commencement

This Regulation commences on 1 September 2001.

#### Note—

This Regulation replaces the *Industrial Relations (General) Regulation 1996* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

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

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

**hearing fee** means a fee for the hearing of proceedings.

**the Act** means the *Industrial Relations Act 1996*.

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

**the 1991 Act** means the *Industrial Relations Act 1991* (as repealed by the *Industrial Relations Act 1996*).

#### Note—

Expressions used in this Regulation that are defined in the Act have the meanings given by the Act (see section 11 of the *Interpretation Act 1987*).

(2) The explanatory note, table of contents and notes in the text of this Regulation (other than those in Schedule 1) do not form part of this Regulation.

## **Part 2 Enterprise agreements**

### **4 Notification of proposed enterprise agreement to which employees are parties**

The Industrial Registrar is to advise, pursuant to section 36 (3) of the Act, the following of a proposed enterprise agreement under which employees are a party that is notified to the Industrial Registrar:

- (a) the secretary or chief executive of each State peak council,
- (b) the secretary or chief executive of any industrial organisation that is a party to an award or enterprise agreement that then applies to the employees for whom the proposed enterprise agreement is to be made.

## **Part 3 Unfair dismissals**

### **5 Exemptions from unfair dismissal provisions—maximum annual remuneration of employees for whom employment conditions not set by industrial instrument**

- (1) For the purposes of section 83 (1) (b) of the Act, the amount prescribed is:
  - (a) except as provided by paragraph (b)—the specified rate referred to in regulation 12.3 of Chapter 2 of the *Workplace Relations Regulations 2006* of the Commonwealth from time to time, or
  - (b) that amount as indexed from time to time in accordance with regulation 12.6 of Chapter 2 of those Regulations.
- (2) This clause applies with respect to dismissals occurring on or after 1 October 1997, whether the contracts of employment concerned were entered into before or after that date.
- (3) A change in the amount prescribed in accordance with subclause (1) applies with respect to dismissals occurring on or after the date on which the change occurs, whether the contracts of employment concerned were entered into before or after that date.

### **6 Other exemptions from unfair dismissal provisions**

- (1) For the purposes of section 83 (2) of the Act, the following classes of employees are exempted from Part 6 of Chapter 2 of the Act:
  - (a) employees engaged under a contract of employment for a specified period of time, if the specified period is less than 6 months,
  - (b) employees engaged under a contract of employment for a specific task,
  - (c) employees serving a period of probation or qualifying period, if the duration of the period, or the maximum duration of the period, is determined in advance and

either:

- (i) the period, or the maximum duration, is 3 months or less, or
- (ii) if the period, or the maximum duration, is more than 3 months—the period, or the maximum duration, is reasonable having regard to the nature and circumstances of the employment,

(d) employees engaged on a casual basis for a short period except employees who:

- (i) are engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months, and
- (ii) would, but for the dismissal, have had a reasonable expectation of continuing employment with the employer.

(2) This clause applies only with respect to dismissals under contracts of employment entered into on or after 1 October 1997.

## **Part 4 Pay slips and employers' records**

### **Division 1 Pay slips**

#### **7 Particulars of remuneration to be supplied to employees**

(1) For the purposes of section 123 (1) of the Act, the following written particulars are to be supplied by the employer to an employee when remuneration is paid to the employee:

- (a) the name and Australian Business Number of the employer,
- (b) the name of the employee,
- (c) if the remuneration of the employee is set by an industrial instrument—the classification of the employee under that instrument,
- (d) the date on which the payment was made,
- (e) the period of employment to which the payment relates,
- (f) the gross amount of remuneration (including overtime and other payments),
- (g) the amount paid as overtime or such information as will enable the employee to calculate the amount paid as overtime,
- (h) the amount deducted for taxation purposes,
- (i) the amount deducted as employee contributions for superannuation purposes,
- (j) the particulars of all other deductions,

(k) the net amount paid.

**Note—**

Section 123 of the Act provides that a failure by the employer to provide the above particulars is an offence punishable by a maximum penalty of 20 penalty units. The section enables an employer, with the approval of the Industrial Registrar, to make different arrangements for the supply of information about remuneration.

(2) Subclause (1) (a) does not take effect until 1 January 2002.

## **Division 2 Employers' records**

### **8 Application**

This Division prescribes, for the purposes of section 129 of the Act:

- (a) the daily records that an employer must keep in relation to employees of the employer (in addition to records of remuneration paid and hours worked by employees required by section 129 (1) (a)), and
- (b) the manner and form of keeping daily records required by section 129.

**Note—**

Section 129 of the Act provides that:

- (a) the Industrial Registrar may approve of different requirements for the manner and form of keeping the records than those prescribed by this Division, and
- (b) the employer must keep the records for a period of at least 6 years, and
- (c) a contravention of section 129 or this Division is an offence punishable by a maximum penalty of 20 penalty units.

### **9 Content of records—general**

- (1) The prescribed records relating to an employee must contain the following particulars:
  - (a) the name of the employer,
  - (b) the Australian Business Number of the employer,
  - (c) the name of the employee,
  - (d) if any conditions of employment of the employee are set by an industrial instrument—the classification of the employee under that instrument,
  - (e) whether the employee is employed full-time or part-time,
  - (f) whether the employee is employed on a permanent, temporary or casual basis,
  - (g) if the employee is an apprentice or trainee within the meaning of the *Industrial*



*and Commercial Training Act 1989*—the date the person became such an apprentice or trainee,

(h) the date on which the employee was first employed with the employer,

(i) if the employee's employment is terminated—the date of termination.

(2) Subclause (1) (b) does not take effect until 1 January 2002.

#### **10 Content of records—remuneration and hours worked**

(1) The prescribed records relating to an employee must contain the following particulars concerning the remuneration paid and hours worked by the employee:

(a) if the relevant industrial instrument prescribes the number of hours to be worked per week, day or other period—the number of hours worked by the employee during each such period,

(b) if the relevant industrial instrument limits the daily hours of work and provides for the payment of daily overtime—the number of hours worked by the employee during each day and the times of starting and ceasing work,

(c) if the relevant industrial instrument prescribes a rate of remuneration per week, day, hour or other period—the rate of remuneration per week, day, hour or other period at which the employee is paid,

(d) if the relevant industrial instrument prescribes piece-work—the number and description of pieces made by the employee and the rate per piece at which the employee is paid,

(e) the gross amount of remuneration paid to the employee, showing the deductions made from that remuneration,

(f) such other particulars as are necessary to show that the requirements of the relevant industrial instrument relating to remuneration paid and hours worked are being complied with.

(2) In this clause, **remuneration** includes overtime and other payments.

#### **11 Content of records—leave**

The prescribed records relating to an employee must contain the following particulars about leave of any kind to which the employee is entitled under the industrial relations legislation or an industrial instrument:

(a) the leave taken by the employee,

(b) the employee's entitlement from time to time to that leave,

- (c) accrual of leave.

## **12 Content of records—superannuation contributions**

- (1) The prescribed records relating to an employee must contain the following particulars about any superannuation contributions that the employer must make for the benefit of the employee under an industrial instrument:
  - (a) the amount of the contributions made,
  - (b) the period over which the contributions were made,
  - (c) when the contributions were made,
  - (d) the name of the fund or funds to which the contributions were made,
  - (e) the basis on which the employer became liable to make the contributions (including particulars of any relevant election by the employee).
- (2) The particulars referred to in subclause (1) (a)–(c) are not required in the case of contributions to a defined benefit superannuation fund within the meaning of the *Occupational Superannuation Standards Regulations* of the Commonwealth.

## **13 Manner and form of keeping records**

- (1) The prescribed records must be:
  - (a) in legible form in the English language, or
  - (b) in computerised or other form that is readily accessible and is convertible into a legible form in the English language.
- (2) For the purposes of enabling an inspector or other person to exercise any power conferred by the Act to inspect any records kept in the form referred to in subclause (1) (b), the relevant part of the records are to be converted into legible form in the English language.

## **14 Transfer of records to successor employers**

- (1) This clause applies to the transfer of records kept by an employer (the **former employer**) relating to a transferred employee (as defined in section 101 of the Act) to the successor of the employer (the **new employer**).
- (2) The former employer must transfer to the new employer all prescribed records relating to the transferred employee that, at the date of transfer, the former employer is required to keep under section 129 of the Act.
- (3) The new employer is to keep those transferred records as if they had been made by the new employer at the time they were made by the former employer.

- (4) The former employer is required to keep a copy of the transferred records for a period of at least 6 years after those records were made.
- (5) The new employer is not required to make records of anything occurring in the course of the transferred employee's employment with the former employer.

## **Part 5 Industrial Relations Commission**

### **15 Acting President**

- (1) This clause applies whenever the President and Vice-President of the Commission are both absent from duty and an Acting President has not been appointed under clause 1 (2) of Schedule 2 to the Act or, if such an Acting President has been appointed, the Acting President is absent from duty.
- (2) In any such case, the next most senior Deputy President of the Commission who is not absent from duty is the Acting President of the Commission.
- (3) Any such Acting President has the functions of the President and anything done by that Acting President in the exercise of those functions has effect as if it had been done by the President.
- (4) In this clause, an absence from duty includes a vacancy in the relevant office.

### **16 Oaths to be taken by members of Commission**

A member of the Commission appointed after the commencement of the Act is to take, on appointment, the oath of allegiance and:

- (a) in the case of a judicial member—the judicial oath, or
- (b) in any other case—the official oath.

### **17 Regions**

For the purposes of section 157 (3) of the Act, the following areas of New South Wales are prescribed as regions of the State:

- (a) **the Hunter Region**—comprising the local government areas of Cessnock, Dungog, Gloucester, Great Lakes, Lake Macquarie, Maitland, Merriwa, Murrurundi, Muswellbrook, Newcastle, Port Stephens, Scone, Singleton and Wyong,
- (b) **the Illawarra-South Coast Region**—comprising the local government areas of Kiama, Shellharbour, Shoalhaven and Wollongong.

### **18 Nominators of Industrial Committees**

- (1) For the purposes of section 198 (3) of the Act, the members of an Industrial Committee (other than the Chairperson) are to be appointed by the Industrial

Registrar on the nomination of such industrial or other organisations as are determined by the Commission in respect of the Committee.

- (2) The number of members to be nominated by any such organisation is to be determined by the Commission.
- (3) Nominations are to be made within such time, and in accordance with such requirements, as are notified to the organisation concerned by the Industrial Registrar.
- (4) The Commission may, in accordance with section 198 of the Act and this clause, determine that different or alternative members are to be nominated for different matters dealt with by the Industrial Committee.

### **19 Oaths to be taken by members of Industrial Committees**

A member of an Industrial Committee (other than a member of the Commission) appointed after the commencement of the Act is to take, on appointment, the official oath.

### **20 Expenses of persons summonsed**

- (1) This clause applies to any summons (however described) for the purposes of the Act that is issued at the request of a party and requires a person to do either or both of the following:
  - (a) attend and give evidence,
  - (b) attend and produce documents or other things.
- (2) Any such person is not required to comply with the summons unless an amount sufficient to meet the reasonable expenses of the person in complying with the summons is paid or tendered to the person at the time of service of the summons or not later than a reasonable time before the day on which the person is required to comply with the summons.
- (3) If the person required to comply with the summons is not a party and, in order to comply with the summons, incurs expense or loss substantially exceeding any amount paid under subclause (2), the Commission may order the party who requested the issue of the summons to pay to the person an amount sufficient to make good the expense or loss.

### **21, 22 (Repealed)**

### **23 Functions of Industrial Registrar**

- (1) The Industrial Registrar may exercise the following functions in connection with any matter before the Industrial Registrar:
  - (a) subject to the Act, determine his or her own procedure in the matter,

- (b) issue a summons under section 165 of the Act for the purposes of dealing with the matter,
  - (c) adjourn proceedings in the matter to any time and place,
  - (d) make any amendments to the proceedings in the matter that the Industrial Registrar considers necessary in the interests of justice,
  - (e) conduct proceedings in the matter publicly or, if the Industrial Registrar considers it necessary, privately,
  - (f) require the presentation of the respective cases of the parties in the matter to be limited to the periods of time that the Industrial Registrar determines are reasonably necessary for the fair and adequate presentation of the cases,
  - (g) require evidence or argument in the matter to be presented in writing and decide on the matters on which the Industrial Registrar will hear oral evidence or argument,
  - (h) dismiss at any stage any proceedings in the matter if the Industrial Registrar considers the proceedings are frivolous or vexatious,
  - (i) notify any person or body of proceedings in, or any other aspect of, the matter if the Industrial Registrar considers that the person or body may be affected by the matter.
- (2) The Industrial Registrar has, in connection with proceedings for the approval of an enterprise agreement or contract agreement, the function of notifying the persons or bodies who may be entitled to appear or be represented in the proceedings that the agreement has been lodged for approval.
- (3) The functions conferred by this clause are in addition to any functions delegated to the Industrial Registrar by the Commission or conferred on the Industrial Registrar by the Act, by any other provision of the regulations or by the rules of the Commission.

## **Part 5A Commission fees**

### **23A Amounts payable in relation to proceedings in the Commission**

- (1) Subject to this Regulation, the fee that a person must pay in respect of a matter referred to in Column 1 of Schedule 1 is:
- (a) except as provided by paragraph (b), the fee specified in respect of that matter in Column 2 of that Schedule, or
  - (b) if the person is a corporation and a fee is specified in respect of that matter in Column 3 of that Schedule, the fee so specified.

(2) Despite subclause (1), the fee payable by a corporation that produces evidence, satisfactory to the Industrial Registrar:

- (a) that its turnover, in the financial year of the corporation immediately preceding the financial year in which the fees are to be taken, was less than \$200,000, or
- (b) if the corporation has not been in existence for a full financial year, that its turnover in its first financial year is likely to be less than \$200,000,

is the fee specified in Column 2 of Schedule 1.

### **23B Persons by and to whom fees are payable**

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

### **23C When fees become due**

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

### **23D Payment of hearing allocation fees**

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

the proceedings,  
whichever first occurs.

### **23E Payment of hearing fees**

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

### **23F General power to waive, postpone and remit**

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

### **23G Circumstances in which fees not chargeable**

- (1) Fees under Schedule 1 are not payable by the Crown, or by any person (other than the WorkCover Authority) acting on behalf of the Crown, with respect to any proceedings to which any of the following persons or bodies (other than the WorkCover Authority) is a party:
  - (a) the Crown,

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

## **Part 6 Industrial organisations**

### **24 Copies of certificates of registration**

The Industrial Registrar may issue to an industrial organisation a copy of the certificate of registration previously issued to it under section 221 (3) of the Act.

### **25 Rules to provide for seal of organisation**

The rules of a State organisation must provide for a seal of the organisation to be kept by a member of the committee of management of the organisation and to be affixed to a document only with the authority of at least 2 members of that committee.

### **26 Rules for elections—State and Federal organisations**

- (1) For the purposes of section 239 (1) (a) of the Act, the membership of a State branch of a Federal organisation and the membership of a State organisation registered under Chapter 5 of the Act is substantially similar if the Industrial Registrar is satisfied that the membership would be substantially similar but for the fact that persons employed in the Australian Capital Territory are members of the State branch of the Federal organisation.
- (2) For the purposes of section 239 (1) (b) of the Act, the rules of a State branch of a Federal organisation comply substantially with the requirements relating to election of the holders of offices under the Act if the Industrial Registrar is satisfied that the rules would comply substantially with those rules but for the fact that the rules cover persons employed in the Australian Capital Territory.



## **27 Rules for elections—exemptions by Industrial Registrar**

An opportunity by an industrial organisation to be heard for the purposes of section 240 (6) and (7) of the Act is to be given by notifying the organisation of the Industrial Registrar's intention to take the relevant action and by allowing the organisation at least 14 days after the notice is given in which to show cause why the action should not be taken.

## **28 Regulation of industrial organisations (other than State organisations)**

In accordance with section 291 of the Act, the provisions of section 280 of the Act (Organisations to notify particulars of loans, grants and donations) apply to industrial organisations that are not State organisations.

## **29 Deemed registration of Newcastle Trades Hall Council**

- (1) In accordance with section 217 (3) of the Act, the Newcastle Trades Hall Council is taken to be registered as an industrial organisation of employees under Chapter 5 of the Act.
- (2) The provisions of Chapter 5 of the Act do not apply to that organisation, except for the following provisions (with any necessary modifications):
  - (a) section 221,
  - (b) section 224,
  - (c) section 263 (and section 266 in so far as it applies to section 263),
  - (d) sections 267–271,
  - (e) sections 278–281.
- (3) The Newcastle Trades Hall Council is required to lodge a copy of its rules with the Industrial Registrar as soon as practicable after any change to the rules.

## **30 Former non-industrial organisations**

- (1) The repeal of the 1991 Act does not affect the continuity of any non-industrial organisation under that Act that is not a registered industrial organisation under the [Industrial Relations Act 1996](#) on that repeal.
- (2) If any such non-industrial organisation was incorporated under the 1991 Act, the following provisions apply on the repeal of that Act:
  - (a) the organisation ceases to be a body corporate under that Act, but does not cease to be an unincorporated organisation,
  - (b) the property of the incorporated organisation is the property of the

unincorporated organisation and is required to be held and applied for the purposes of the organisation under the rules of the organisation so far as they can still be carried out or observed.

### **31 Other provisions relating to elections**

- (1) This clause applies until the regulations under the Act otherwise provide.
- (2) The provisions of sections 442–451 of the 1991 Act (and the regulations under those provisions) apply to a State organisation as regulations made under section 249 of the Act.

## **Part 7 Public vehicles and carriers**

### **32 Contract of carriage—meaning**

- (1) For the purposes of section 309 (1) (a), (b) and (c) of the Act, the following circumstances are prescribed:
  - (a) driving or riding on a motor vehicle or bicycle by a person who is employed (whether pursuant to a contract of employment or not and whether by the carrier or not) to take the place temporarily of a person directly involved in the business who is sick, on annual leave or is otherwise temporarily unavailable,
  - (b) riding on a motor vehicle by a person who is employed (whether pursuant to a contract of employment or not and whether by the carrier or not) for the purpose of loading or unloading, or assisting in loading or unloading, goods being transported by means of the motor vehicle.

- (2) In this clause:

***person directly involved in the business*** means:

- (a) if the carrier is not a partnership or body corporate—the carrier, or
- (b) if the carrier is a partnership—a partner, or
- (c) if the carrier is a body corporate—a person referred to in section 309 (1) (c) (i), (ii) or (iii) of the Act.

### **33 Notification of proposed contract agreements to which groups of carriers are parties**

The Industrial Registrar is to advise, pursuant to section 325A (3) of the Act, the following of a proposed contract agreement under which a group of carriers is a party that is notified to the Industrial Registrar:

- (a) the secretary or chief executive of each State peak council,
- (b) the secretary or chief executive of any association of contract carriers that is a party

to the making of a contract determination, or to a contract agreement, that then applies to the conditions of engagement of those carriers under contracts to which the proposed contract agreement is to apply,

- (c) the secretary or chief executive of any association of employing contractors that is a party to the making of a contract determination, or to a contract agreement, that then applies to the conditions of engagement of those carriers under contracts to which the proposed contract agreement is to apply (unless the association is to be a party to the proposed contract agreement).

### **34 Publication of application for registration of association of contract drivers or carriers**

Notice of an application under section 335 of the Act is to be published in a newspaper circulating throughout the State within 14 days after the lodgment of the application.

### **35 Objection against registration of association of contract drivers or carriers**

For the purposes of section 336 of the Act, a person who objects to the granting of an application under section 335 of the Act must serve the notice of objection on the Industrial Registrar within 28 days after the notice of the application is duly published by the Industrial Registrar in a newspaper circulating throughout the State.

### **36 Withdrawal of registration of association at request of members**

- (1) An application for a certificate of withdrawal of registration of an association under section 338 of the Act:
  - (a) is to be made by a majority of the members of the governing body of the association or by a majority of the members of the association, and
  - (b) is not to be made until the applicants have given at least 14 days' written notice of their intention to apply for the certificate to all financial members of the association at their last known place of residence or business.
- (2) An application for such a certificate may not be made if:
  - (a) it is contrary to the rules of the association, or
  - (b) proceedings have been duly instituted within the association to prevent the making of the application.

## **Part 8 Enforcement**

### **37 Authority to prosecute**

- (1) The purpose of this clause is to prescribe certain persons as persons who may institute proceedings for an offence against the Act or the regulations.
- (2) An industrial organisation concerned in the industry to which the proceedings relate is

prescribed for the purposes of section 399 (1) (c) of the Act.

### **38 Notification of proceedings**

- (1) An industrial organisation that institutes proceedings for an offence against the Act or the regulations must, within 3 days after doing so, send particulars of the proceedings to the Director-General of the Department of Industrial Relations.

Maximum penalty: 5 penalty units.

- (2) Particulars of proceedings sent to the Director-General in accordance with this clause are sent for information only.

### **39 Penalty notices**

- (1) For the purposes of section 396 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 2 is declared to be a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 4 of Schedule 2.

- (2) If the reference to a provision in Column 1 of Schedule 2 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.

### **40 Short descriptions**

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision specified in Column 1 of Schedule 2 consists of the IPB Code set out in relation to the offence in Column 2 of Schedule 2 together with:
  - (a) the expression specified in Column 3 of that Schedule, or
  - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision specified in Column 1 of Schedule 2, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used, and any such document continues to have effect as if

that expression had not been amended or repealed.

- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.
- (5) In this clause and Schedule 2:
  - (a) **Infringement Processing Bureau** means the Infringement Processing Bureau within the Police Service, and
  - (b) **IPB Code**, in relation to an offence, means the code allocated to the offence by the Infringement Processing Bureau.

## Part 9 Additional persons deemed to be employees

### 41 Additional persons prescribed by regulation

- (1) The persons described in this Part as employees are taken to be employees for the purposes of the Act.
- (2) A person described in this Part as the employer of any such employee is taken to be the employer for the purposes of the Act.

#### Note—

Clause 1 (m) of Schedule 1 to the Act authorises the making of regulations prescribing additional categories of deemed employees and their deemed employer.

### 42 Security industry workers

- (1) Any person (other than a bona fide contractor employing labour for that purpose) who performs security officer work, or security transport work, under a contract with another person is taken to be an employee.
- (2) In such a case, the other person is taken to be the employer of the person who performs that work.
- (3) For the purposes of this clause, **security officer work** is work for which a rate of pay is fixed by the *Security Industry (State) Award* when performed by an employee, being the work of security officers in the security or watching industries:
  - (a) including the work of persons engaged in control rooms to monitor, respond to or act on security alarm systems, but
  - (b) not including the work of persons engaged solely as general office or clerical workers.
- (4) For the purposes of this clause, **security transport work** is work for which a rate of

pay is fixed by the *Transport Industry—Armoured Cars, &c. (State) Award* when performed by an employee, being the work of transporting cash or other valuables by armoured vehicle (whether as an armoured vehicle operator, a despatch hand or an armoured vehicle escort).

## **Part 10 Miscellaneous**

### **43 Industrial Magistrate—civil procedure**

- (1) For the purposes of section 383 of the Act, the provisions of the Act, the regulations and rules of the Commission as to the practice and procedure of the Commission in Court Session (except in criminal proceedings) apply, with all necessary modifications, to proceedings before the Chief Industrial Magistrate or other Industrial Magistrate.
- (2) Without limiting subclause (1), the Chief Industrial Magistrate or other Industrial Magistrate may hear evidence orally or by affidavit and may hear evidence whether or not notice to call the evidence has been given. However, if the interests of justice so require, a witness is to be called to give oral evidence instead of evidence by affidavit.
- (3) This clause does not apply to proceedings for an offence or to proceedings under section 357 of the Act for a civil penalty for a contravention of an industrial instrument.

### **43A Subcontractor's statement about payment of employees**

- (1) Without limiting the form in which a written statement under section 127 (3) of the Act may be made, the written statement may be in a form approved by the Director-General of the Department of Commerce.
- (2) A written statement under section 127 (3) of the Act may include, or be included in, any statement made by the subcontractor for the purposes of section 31H of the *Pay-roll Tax Act 1971*, section 175B of the *Workers Compensation Act 1987* or a similar provision under any other Act.

### **44 Savings provisions**

- (1) Any act, matter or thing that, immediately before the repeal of the *Industrial Relations (General) Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.
- (2) No hearing allocation fee or hearing fee is payable under this Regulation in respect of any proceedings before the Full Bench of the Commission on an application for leave to appeal if proceedings on the application were commenced before 1 August 2005.
- (3) No hearing allocation fee or hearing fee is payable under this Regulation in respect of any proceedings before the Full Bench of the Commission on an appeal if proceedings on the application for leave from which the appeal arises were commenced before 1

August 2005.

- (4) No hearing fee is payable under this Regulation in respect of any hearing in any other proceedings before the Commission if a date for the hearing was allocated before 1 August 2005.

## Schedule 1 Commission fees

(Clause 23A)

### Fees for proceedings before Commission in Court Session

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

Filing a notice of motion under Rule 68 of the IRC Rules in any of the following proceedings:

- (a) proceedings under Division 2 of Part 9 of Chapter 2 of the Act
- (b) proceedings on an appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Division 2 of Part 9 of Chapter 2 of the Act

5	(c) proceedings for an offence taken before the Commission: (i) under section 397 (1) (b) of the Act, or  (ii) under section 105 (1) (b) of the <i>Occupational Health and Safety Act 2000</i>	\$147	\$294
	(d) proceedings on an appeal to the Full Bench of the Commission under section 197 (1) (a), (b) or (c) of the Act in respect of a decision of a Local Court		

For allocation of a date for hearing in relation to:

- (a) proceedings under Division 2 of Part 9 of Chapter 2, or

6	(b) proceedings on an appeal to the Full Bench of the Commission under section 187 of the Act in relation to a decision of the Commission under Division 2 of Part 9 of Chapter 2 of the Act	\$1,216	\$2,432
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For the hearing of proceedings under Division 2 of Part 9 of Chapter 2 of the Act, for each half day of hearing on or after the 11th day

7	<b>Note—</b>  For the purposes of this item, a half day comprises a period of 3 hours or less, such period to include any adjournment of less than half an hour.	\$227	\$454
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**Fees for proceedings before Commission otherwise than in Court Session**

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



**Miscellaneous fees**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Matter for which fee payable</b>	<b>Standard fee</b>	<b>Corporation fee</b>
1 Issuing a subpoena for production, or for production and to give evidence	\$55	\$110
2 Issuing a subpoena to give evidence	\$28	\$56
3 Opening or keeping open the registry or part of the registry:		
(a) on a Saturday, Sunday or public holiday, or	\$506	\$1,012
(b) on any other day:		
(i) before 8.30am or after 4.30pm	\$506	\$1,012
(ii) between 8.30am and 9.00am or between 4.00pm and 4.30pm	\$53	\$106
4 Furnishing a certified copy of a judgment or order, or of the written opinion or reasons for opinion of any member of the Commission or the Industrial Registrar <b>Note—</b>	\$55	\$110
Fees under this item are not chargeable to any party to proceedings in respect of the first such copy that is supplied to that party.		
5 Furnishing an uncertified copy of a judgment or order, or of the written opinion or reasons for opinion of any member of the Commission or the Industrial Registrar <b>Note—</b>	\$31	\$50
Fees under this item are not chargeable to any party to proceedings in respect of the first such copy that is supplied to that party.		

Making a copy of any document (otherwise than as provided for by items 4 and 5)

**Note 1—**

6	Fees under this item are not chargeable to any person in respect of whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the making of such a copy without charge.	\$10, plus an additional \$2 per page after the first 5 pages	—
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**Note 2—**

Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.

Supplying a duplicate tape recording of sound-recorded evidence

**Note 1—**

7	Fees under this item are not chargeable to any person to whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the supply of such a recording without charge.	\$36 per cassette	—
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**Note 2—**

Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.

8	Supplying a copy of the transcript of any proceedings:		
	(a) where the matter being transcribed is under 3 months old	\$66, plus an additional \$7.90 per page after the first 8 pages	—
	(b) where the matter being transcribed is 3 months old or older	\$78, plus an additional \$9.00 per page after the first 8 pages	—

**Note 1—**

Fees under this item are not chargeable to any person to whom the Director-General of the Department of Commerce, or the President of the Anti-Discrimination Board, has authorised the supply of such a copy without charge.

**Note 2—**

Fees under this item are chargeable to an industrial organisation or association registered under Chapter 5 of the Act.

9	For retrieval from archives of any document or file	\$55	\$110
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Providing any service for which a fee is not otherwise imposed by this Schedule

10 **Note—** \$30 \$60

A fee may not be imposed under this item except with the approval of the Industrial Registrar.

## Schedule 2 Penalty notice offences

(Clauses 39 and 40)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Provision</b>	<b>IPB Code</b>	<b>Short description</b>	<b>Penalty \$</b>
<b>Offences under the Act</b>			
Section 67 (2)	9439	not preserve parental leave records/ documents/notices	220
Section 78 (1)	9440	not retain part-time work agreement	220
Section 78 (2)	9441	not give copy of agreement to employee	220
Section 78 (3)	9442	not send copy of agreement to Industrial Registrar	220
Section 123 (1)	9443	fail to supply prescribed payment particulars	220
Section 129 (6)	9444	contravene Act/regulations re daily records	220
Section 341 (5)	9445	not return certificate for cancellation	220
Section 360 (1)	9446	advertise in contravention of industrial instrument	220
Section 360 (2)	9447	not disclose name and address of advertiser	220
Section 361 (1)	9448	not exhibit industrial instrument	220
Section 387 (2)	9449	not comply with requirement of inspector	220
<b>Offences under this Regulation</b>			
Clause 38 (1)	8688	not send particulars of proceedings to Director-General	220