

# Industrial Relations Commission Rules 2009

[2009-625]



New South Wales

## Status Information

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### Provisions in force

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### Authorisation

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# Industrial Relations Commission Rules 2009



New South Wales

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# Industrial Relations Commission Rules 2009



New South Wales

The Rule Committee of the Industrial Relations Commission has made the following rules under the [Industrial Relations Act 1996](#).

Mick Grimson Secretary of the Rule Committee

## Part 1 Preliminary

### 1.1 Name of Rules

These Rules are the [Industrial Relations Commission Rules 2009](#).

### 1.2 Commencement

These Rules commence on 1 February 2010 and are required to be published on the NSW legislation website.

### 1.3 Repeal

The [Industrial Relations Commission Rules 1996](#) are repealed.

### 1.4 Definitions

(1) In these Rules:

**approved form** means a form approved for the time being by the Commission.

**decision** includes any award, order, direction, contract determination or ruling.

**file** means file in an office of the Registry.

**President** means the President of the Commission.

**Registrar** means the Industrial Registrar.

**Registry officer** means a Deputy Industrial Registrar or other member of staff referred to in section 207 of the Act.

**respondent** means a party to the proceedings other than an applicant or appellant.

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

(2) Notes included in these Rules do not form part of the Rules.

### **1.5 Application of Rules to Industrial Committees and Contract of Carriage Tribunal**

The provisions of these Rules that apply to the Commission extend to:

- (a) each Industrial Committee in relation to its exercise of the functions of the Commission under section 199 of the Act, and
- (b) the Contract of Carriage Tribunal in relation to the exercise of its functions under Part 7 of Chapter 6 of the Act,

and, for that purpose, a reference to the Commission in any such provision is taken to be a reference to an Industrial Committee or to the the Contract of Carriage Tribunal, as the case requires.

**Note—**

The Commission, both when constituted as the Industrial Court and otherwise, is also subject to the *Uniform Civil Procedure Rules 2005*. Those rules do not apply to the Contract of Carriage Tribunal.

## **Part 2 Administration**

### **Division 1 General**

#### **2.1 Seals and stamps**

- (1) The seal of the Commission must be kept by the Registrar.
- (2) A rubber stamp facsimile of the seal may be used instead of the seal for any purpose.
- (3) A stamp of the Registrar may be used by the Registrar and by any Registry officer authorised to do so by the Registrar.

#### **2.2 Registry offices**

The offices of the Registry are to be at such locations as the Registrar may direct.

#### **2.3 Registry hours**

- (1) The offices of the Registry are to be open for business from 9.00 am to 4.00 pm on all days except Saturdays, Sundays and public holidays.
- (2) The offices of the Registry may be opened at other times by the direction of the Registrar or the President.

#### **2.4 Exercise of Commission's functions by Registrar and Registry officers**

The President may, by instrument in writing:



- (a) direct that any function of the Commission under these Rules may be exercised by the Registrar, or by a Registry officer, in such circumstances, and subject to such conditions, as are specified in the instrument, and
- (b) vary or revoke any such instrument.

**Note—**

Similar instruments may be made under section 13 of the *Civil Procedure Act 2005* in relation to the functions of the Commission under that Act and the *Uniform Civil Procedure Rules 2005*.

## **2.5 Correction of orders etc published on NSW industrial relations website**

- (1) This rule applies to any order, award or contract determination that is published on the NSW industrial relations website.
- (2) The Registrar may publish on the NSW industrial relations website any correction that is necessary by reason of a clerical or printing error in such an order or award.
- (3) If in such an order or award there is any mistake arising from an accidental slip or omission, the Commission may correct the mistake or error, at any time, either on application by a party or on its own initiative.
- (4) The Commission may, at any time, correct any order or award for the purpose of carrying out its intention or to express its meaning more accurately, either on application by a party or on its own initiative.
- (5) The power under this rule is additional to the power under the *Uniform Civil Procedure Rules 2005* relating to amendment.

## **2.6 Copies to be filed**

Unless the Registrar otherwise directs, documents filed in proceedings before the Commission must include the following:

<b>Type of Proceedings</b>	<b>Number of copies</b>
General application	original plus one copy (unless the form otherwise requires)
Application for award, contract determination or enterprise agreement	original plus two copies
Application for relief from unfair dismissal	original plus two copies
Dispute notification	original only
Prosecution	original plus one copy
Appeals	original plus three copies

Matters before a full bench	original plus three copies (unless it is known that there are more than three members of the bench, in which case, the same number of copies as there are members of the bench)
Contract of Carriage Tribunal	original plus three copies

**Note—**

You will also need a copy for yourself 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.

## **Division 2 Access to Commission documents**

### **2.7 Requirements for leave**

- (1) Subject to subrules (2) and (3), a person may not be given access to any document or thing held by the Commission except by leave of the Commission.
- (2) Access to any such document or thing may be given, without leave, to the following persons:
  - (a) any party to the proceedings to which the document or thing relates,
  - (b) any person seeking to search a register kept under section 45, 331 or 342 of the Act,
  - (c) any person seeking to search copies of part-time work agreements kept by the Registrar under section 78 of the Act,
  - (d) any person seeking to search an application to make or vary an award or determination,
  - (e) any person seeking to search any other register kept by the Registrar.
- (3) However, unless the person seeking access is a party to the proceedings, leave is required to the giving of access to a document or thing that relates to:
  - (a) proceedings on an unfair dismissal application, or
  - (b) proceedings conducted in the absence of the public, or
  - (c) information concerning a trade secret in respect of which a direction has been given by the Commission under section 395 of the Act, or
  - (d) a matter in respect of which a direction has been given by the Commission that confidentiality should be observed, or
  - (e) proceedings, or any part of proceedings, in respect of which a direction has been given by the Commission that the proceedings or part must not be opened for inspection, or

- (f) any document or thing in respect of which a direction has been given by the Commission that the document or thing must not be opened for inspection, or
- (g) proceedings for contempt.

## **2.8 Applications for leave to gain access**

- (1) An application for leave to be given access to any document or thing must be in writing, and must state why access is desired and why leave should be allowed.
- (2) The application must demonstrate that access should be granted in respect of the particular documents the subject of the application.
- (3) The application may be dealt with in the absence of the public and without the appearance of any person.
- (4) Doubtful cases may be referred to the President, or to a judicial member nominated by the President, for consideration.
- (5) Interested parties may be notified of, and may be heard in relation to, the application.

### **Note—**

Fees for the provision of a copy of any document to which access is given may be charged in accordance with the regulations under the Act.

## **Part 3 Commencement of proceedings**

### **3.1 Originating process**

- (1) The originating process in any proceedings must be in the approved form unless the Commission otherwise orders.
- (2) The originating process:
  - (a) must state that the proceedings may be heard by the Commission, and
  - (b) must state the respondent is liable to suffer judgment, or an order against the respondent, unless the defendant or his or her representative attends before the Commission at the time and place stated in the originating process, and
  - (c) must further state that, before any such attendance, the respondent must file a notice of appearance, and
  - (d) must give the address of the Registry at the place named as the place for attendance.
- (3) Despite subrule (2), the Commission may permit a person to appear even if he or she has failed to file notice of appearance.

### **3.2 Matters initiated by Commission**

- (1) If the Commission decides to act on its own initiative in respect of any matter otherwise in the course of proceedings before it, it may direct that proceedings be commenced by a summons to show cause.
- (2) The summons must be served on such persons, and in such manner, as the Commission may direct.

### **3.3 Applications for proceedings to be dealt with urgently**

- (1) An application for proceedings to be dealt with urgently may be made by filing a notice of motion, together with an affidavit setting out, briefly but specifically, the reasons why the proceedings should be so dealt with.
- (2) Copies of the notice of motion and affidavit must be served on each of the other parties together with the originating process or, if the proceedings have commenced before they are filed, promptly after they are filed.

### **3.4 Recovery of wages, remuneration and other amounts**

- (1) An application for an order for the payment of money under Part 2 of Chapter 7 of the Act:
  - (a) must be signed by the applicant or the applicant's representative, and
  - (b) if not made by the person to whom the money is payable, must be accompanied by that person's written consent, as referred to in section 369 (1) (b) of the Act.
- (2) If the consent referred to in section 369 (1) (b) of the Act is not available, proof of such consent may, by leave of the Commission, be given at the hearing of the proceedings.
- (3) An application under section 380 of the Act for the proceedings to be dealt with under section 379 of the Act:
  - (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 4 Other stages of proceedings**

### **4.1 Service of documents following reference**

- (1) This rule applies to a reference under section 146 (1) (d), 156 (5) (a), 193 (1), 195 (1) or 195 (4) of the Act or under clause 9 (6) of Schedule 3 to the Act.
- (2) Copies of:
  - (a) the reference, and

(b) the appointment for hearing of the reference,

must be served on such persons, and in such manner, as the Registrar directs.

- (3) If the reference arises from proceedings before the Commission, the Registrar may direct that a copy of the transcript of the proceedings (including any exhibits) be similarly served.
- (4) An affidavit of service must be filed promptly after service of the documents referred to in subrules (2) and (3) has been effected.

#### **4.2 Reply to application**

A respondent to an application may, but need not, file a notice in reply.

#### **4.3 Points of contention**

- (1) At any stage of the proceedings, the Commission may direct any party to file and serve on each other party a list of matters that the party asserts are in issue in the proceedings.
- (2) The Commission may determine any differences between the parties as to the matters in issue.
- (3) When the matters in issue have been agreed or determined, the Commission may give such directions as to the conduct of the proceedings as will ensure that the proceedings are restricted to those matters.

### **Part 5 Dispute resolution**

#### **Division 1 Dispute notifications under section 130 or 332 of the Act**

##### **5.1 Notification of dispute**

The notification of an industrial dispute under section 130 or 332 of the Act must identify the parties affected by the dispute, and the applicable industrial instrument, if any, and must give relevant particulars of the dispute.

**Note—**

Rule 3.4 will apply if the notification indicates that an order in respect of a small claim will be sought under section 380 of the Act.

##### **5.2 Reinstatement claims related to notification**

- (1) If the notification indicates that an order for reinstatement (or similar) will be claimed, particulars of the claim must be served on the parties affected by the dispute promptly after the dispute is notified.
- (2) Subrule (1) does not apply if the particulars are included in some other application

that has been made under the Act.

### 5.3 How disputes to be notified

- (1) Notification of a dispute may be given to the Registrar orally (including by telephone), in writing, by facsimile message or by electronic mail.
- (2) If the notification is in writing, it may be given to the Registrar:
  - (a) by delivering it to a Registry officer, or
  - (b) by sending it by post to the Registry's business address, or
  - (c) by sending it to the Registry's DX address.
- (3) If the notification is not in writing, the person giving the notification must confirm the notification in writing as soon as possible.

### 5.4 Service of notification

A copy of the notification (or its written confirmation) must be served promptly on the other parties.

### 5.5 Summons to attend compulsory conference

- (1) A summons to attend a compulsory conference under section 132 or 332 of the Act may be given to the persons concerned, or to their representatives, orally (including by telephone), in writing, by facsimile message or by electronic mail.
- (2) A person to whom notice has been given under subrule (1) must attend or be represented at the conference.

## Division 2 Proceedings under section 139 of the Act

### 5.6 Form of application

- (1) An application under section 139 of the Act must state the following:
  - (a) the name and address of the person by whom the proceedings are brought (***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 details and nature of the contravention that is alleged to have occurred.
- (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 summons sought.

### **5.7 Service of summons and affidavit**

- (1) If the summons is issued, the summons and supporting affidavit must be served on the defendant no later than 5 days before the return date specified in the summons unless the Commission gives leave for a shorter period of service.
- (2) An affidavit of service of the summons, or notice that service has not been effected, must be filed before the return date specified in the summons.
- (3) If the summons has not been served by the return date, the Registrar must, on an application made by the prosecutor in accordance with rule 5.6, issue a further summons for the defendant's attendance before the Industrial Court.

## **Division 3 Resolution of disputes pursuant to referral by agreement or by authority of Commonwealth legislation**

### **5.8 Disputes referred by agreement**

- (1) An application for a dispute to be resolved by the Commission under section 146A of the Act is to be in the approved form.
- (2) The application should make specific reference to the referral agreement pursuant to which it is made.
- (3) The following provisions apply in relation to a dispute that is before the Commission pursuant to such an application:
  - (a) unless such a copy was annexed to the application or has already been filed, the applicant must ensure that a copy of the referral agreement is provided when the matter comes before the Commission,
  - (b) each party may be represented, but only by a person who is fully conversant with the matters in dispute and has full authority in relation to the settlement of the matter,
  - (c) if the parties have agreed that the Commission is to exercise functions in respect of which the Commission has established standard procedures (whether by practice notes or otherwise) those procedures are to apply to the proceedings.

### **5.9 Dispute resolution process authorised by Commonwealth legislation**

An application to have a dispute resolution process conducted by the Commission under section 146B of the Act is to be in the approved form.

## **Part 6 Awards and contract determinations**

### **Division 1 Preparation of awards**

#### **6.1 Definitions**

In this part:

**award** includes contract determination.

**application for award** includes an application to vary an award and an application to rescind an award.

**computer-readable form**, in relation to a document, means an electronic version of the document:

- (a) that is contained on a diskette or CD-ROM or is in such other electronic medium as is approved for the time being by the Registrar, and
- (b) that is in one or more of the following formats:
  - (i) in the case of text, Microsoft Word (DOC) or Rich Text Format (RTF),
  - (ii) in the case of images, Tagged Image Format (TIF), Graphical Image Format (GIF) or Joint Photographic Experts Group (JPG),or is in such other format as is approved for the time being by the Registrar.

#### **6.2 Preparation of draft award**

- (1) If it intends to make an award, the Commission:
  - (a) may direct the Registrar to prepare, within such period as it may specify, a draft of the proposed award, or
  - (b) may direct one or more of the parties to the proceedings to prepare and submit to the Registrar, within such period as it may specify, a draft of the proposed award.
- (2) A draft of a proposed award must be prepared in computer-readable form.

#### **6.3 Computer-readable version of award to be filed**

- (1) Within 7 days after an award is made, varied or rescinded, such party to the proceedings as the Commission may direct must file a copy of the award, award variation or notice of rescission in a computer-readable form.
- (2) Within 14 days after an award is made, varied or rescinded, the Commission's papers in respect of the proceedings must be forwarded to the Registrar.
- (3) In the case of proceedings that have not been finally determined, it is sufficient



compliance with subrule (2) if the Registrar is provided with such extracts from the papers as are sufficient to enable the award to be settled and published on the NSW industrial relations website.

#### **6.4 Settlement of an award**

- (1) As soon as practicable after the Commission makes or varies an award the Registrar is to settle a draft of the award or award variation.
- (2) For the purpose of settling the draft, the Registrar may (but need not) consult with, or hear submissions from, any party to the proceedings and any other person who appeared in the proceedings.
- (3) The Commission may give directions to the Registrar about any such consultation or hearings.

#### **6.5 Publication of clauses and formats**

- (1) The Full Bench of the Commission, or the Commission constituted by a judicial member nominated by the President, may direct the use of standard clauses in awards.
- (2) The Registrar must publish such directions on the NSW industrial relations website.
- (3) The Commission may depart from a standard clause for any reason it considers sufficient.

### **Division 2 Reprints and consolidations**

#### **6.6 Registrar may prepare reprints**

The Registrar may publish on the NSW industrial relations website a reprint of an award that incorporates all award variations up to a specified date.

#### **6.7 Consolidations**

- (1) The Registrar may exercise the functions of the Commission under section 20 of the Act in respect of an award on request by a person bound by the award or on the Registrar's own initiative, but must not do so contrary to any direction of the Commission or any objection by a party to the award.
- (2) As soon as practicable after a consolidated award is made under section 20 of the Act, the Registrar must publish the award on the NSW industrial relations website.

### **Division 3 Records of persons affected by awards**

#### **6.8 Records of persons affected by awards**

- (1) The Registrar must maintain records in relation to each award of:

- (a) the parties to the award, and
  - (b) the State peak councils in relation to the award, and
  - (c) any registered industrial organisations and other persons who satisfy the Registrar that they have a sufficient interest in applications affecting the award to justify their being served with process relating to the award.
- (2) The Registrar may remove any of the persons or bodies in subrule (1) (c) if satisfied that the person or body has ceased to have a sufficient interest in applications affecting the relevant award.
  - (3) At least once every 3 years the Registrar must give notice to each person or body referred to in subrule (1) in relation to an award, and to the Commission, that the award is due to be reviewed under section 19 of the Act.
  - (4) Such notice may also be given whenever an application for a new award is filed.

#### 6.9 Party cards

- (1) In this rule:

**party** means a person or an organisation that has an interest in an award, or in the making of an application in respect of an award, or that has otherwise participated in the making or variation of an award.

**party card** means a register of parties, maintained by the Registrar, that have an interest in an award.

- (2) The Registrar must maintain a system of party cards.
- (3) Application for inclusion on the party cards may be made to the Registrar in the approved form.
- (4) The Commission may direct that a party be added to or removed from a party card in respect of a particular award or awards.
- (5) Parties to an award that are recorded on a party card must be served with any application concerning the award.
- (6) A party may be removed from a party card by the Commission, provided that the party has been given at least one month's written notice (to be sent to the party's last known address) of the proposal to do so.
- (7) An application to remove a party from a party card in relation to an award may be made by any other party to the award.

## Division 4 Consent awards

### 6.10 Applications for consent awards

- (1) In this rule, **consent award** means an award that is made by mutual consent of all parties to the proposed award, and includes any variation of an award that is made by mutual consent of all parties to the original award.
- (2) An application for a consent award must be supported by an affidavit setting out the basis on which it is contended that the proposed award provides for equal remuneration and other conditions of employment, as referred to in section 23 of the Act.
- (3) The affidavit must be filed together with the application for the consent award or within 7 days after the date on which that application is filed.

## Part 7 Enterprise agreements

### 7.1 Comparison and compliance statement

- (1) An application for approval of an enterprise agreement must be accompanied by an affidavit:
  - (a) that identifies the award or awards, if any, over which the agreement will prevail, and any other agreement that will be rescinded or replaced by the agreement, if approved, and
  - (b) that compares the conditions of employment under the agreement with those that would otherwise apply under the relevant awards or (if there are no such awards) under the relevant employment conditions, and
  - (c) that sets out, briefly but specifically, the basis on which it is contended that:
    - (i) the conditions of employment under the agreement, when compared with those that would otherwise apply under the relevant awards or (if there are no such awards) under the relevant employment conditions, do not, considered as a whole, result in a net detriment to the employees covered by the agreement, and
    - (ii) the agreement complies with any relevant statutory requirements, including those of the *Anti-Discrimination Act 1977*, and
    - (iii) the parties understand the effect of the agreement, and
    - (iv) the parties did not enter into the agreement under duress, and
    - (v) the agreement complies with any principles set by the Commission under section 33 of the Act, or, if the agreement does not meet those principles, that

any departure from those principles does not prejudice the interests of any of the parties to the agreement.

- (2) If the agreement does not cover all of the employees of the employer or employers concerned, the affidavit must also state the basis on which it is contended that the Commission is not prevented from approving the agreement under section 35 (2) of the Act.

## **Part 8 Appeals**

### **8.1 Notice to Appeal**

An application for leave to appeal and appeal may be referred to as a “Notice to Appeal” and must be entitled accordingly.

### **8.2 Time to appeal**

- (1) An appeal must be made:
  - (a) within 21 days after the date of the decision appealed against, or
  - (b) within such further time as the Commission may allow.
- (2) An application to extend time to appeal may be included in the notice to appeal or may be made by separate notice of motion.

### **8.3 Application for stay of proceedings**

- (1) If it is intended to seek a stay of the whole or part of a decision pending the determination of the appeal, the appeal must include an application to that effect.
- (2) An appeal:
  - (a) does not operate as a stay of proceedings, and
  - (b) does not invalidate any intermediate act or proceedings,except so far as the Commission (or, subject to any direction of the Commission, the decision maker below) may direct.

### **8.4 Leave to introduce fresh evidence**

- (1) An application for leave to introduce fresh evidence on appeal may be made:
  - (a) in the notice to appeal, or
  - (b) by leave of the Commission, by notice of motion.
- (2) Such application must be supported by an affidavit that sets out:
  - (a) the nature of the fresh evidence sought to be brought, and

- (b) the reason why the fresh evidence was not brought at first instance, and
- (c) the reasons why the fresh evidence is necessary in the appeal.

### **8.5 Notice of contention**

(1) If the respondent:

- (a) wishes to contend that the decision below should be affirmed on grounds other than those relied on below, and
- (b) does not seek a discharge or variation of any part of that decision,

the respondent need not file a cross-appeal, but may instead file notice of that contention stating, briefly but specifically, the grounds relied on in support of the contention.

(2) The notice referred to in subrule (1) must be filed and served:

- (a) within 14 days after service on the respondent of the application commencing the appeal, or
- (b) within such further time as the Commission may allow.

### **8.6 Respondents**

- (1) Each of the parties (other than the appellant) appearing or represented in the proceedings from which a decision is being appealed must be joined as respondents to the appeal.
- (2) The Commission may order the addition or removal of any person as a party to an appeal.

### **8.7 Interlocutory decisions**

Any interlocutory decision made in proceedings before the Commission is taken, for the purposes of any appeal against that decision, to have been made on the same date as the date of the Commission's final decision in the proceedings.

### **8.8 Appeal book**

Unless the Commission otherwise directs the appellant must, 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 any exhibits) before the decision maker below, and
- (c) the decision appealed against,

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

### **8.9 Issue of summons in appeal proceedings**

- (1) A summons may not be issued in relation to an appeal except by leave of the Commission.
- (2) Such leave may be sought by the filing of a notice of motion with an affidavit in support.

### **8.10 Stated case**

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

### **8.11 Security for costs**

- (1) No security for the costs of an appeal to the Industrial Court is required unless, in special circumstances, the Court orders that such security be given.
- (2) This rule does not affect the powers of the Industrial Court under Part 42 of the [Uniform Civil Procedure Rules 2005](#).

## **Part 9 Industrial Committees**

### **9.1 Dissolution or extension of term of an Industrial Committee**

- (1) An application to the Commission to dissolve or extend the term of an Industrial Committee must be served on:
  - (a) the person on the records relating to the Committee maintained under rule 9.3 (b) and (c), and
  - (b) such other persons as the Registrar directs.
- (2) Not less than 3 months before the date on which an Industrial Committee is to be dissolved under section 200 (1) of the Act, the Registrar must notify any party entitled to nominate a member of the Committee of the date on which the Committee will be dissolved.
- (3) If of the opinion that an Industrial Committee has ceased to function or has become obsolete, the Registrar may submit a report to that effect to the Commission.
- (4) After considering the report and hearing any interested parties, the Commission may dissolve the Industrial Committee.
- (5) If the Commission considers that there are no interested parties, it may dissolve the Industrial Committee in chambers.

## **9.2 Notice of sitting of an Industrial Committee**

A sitting of an Industrial Committee may be convened by the Chairperson of the Committee 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.

## **9.3 Records relating to Industrial Committees**

The Registrar must maintain records in relation to each Industrial Committee of:

- (a) the members, alternate members and deputy members of the Committee, and
- (b) each person entitled to nominate a member of the Committee, and
- (c) any other person who the Registrar is satisfied that, although not being so entitled, has a sufficient interest in matters dealt with by the Committee to justify being served with process affecting the establishment, constitution or dissolution of the Committee.

## **Part 10 Appearance**

### **10.1 No step without appearance**

Subject to these Rules, a person must not, except by leave of the Commission, take any step in any proceedings unless, before taking that step, the person has filed originating process or has entered an appearance.

### **10.2 How appearance entered**

- (1) A respondent may enter an appearance in proceedings by filing a notice of appearance or, by leave of the Commission, orally in the course of the proceedings.
- (2) If an appearance is entered orally in the course of the proceedings written confirmation must be promptly filed and served.
- (3) A respondent who files a reply in proceedings is taken to have entered an appearance in the proceedings.

### **10.3 Notice of appearance**

- (1) A notice of appearance must show:
  - (a) the name, address, telephone number, email address (if any) and facsimile number (if any) of the person entering the appearance, and
  - (b) if the person entering the appearance appears by a representative, the name, address, telephone number, email address (if any) and facsimile number (if any) of the representative, and
  - (c) if the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent in the proceedings, the name, address, telephone

number, email address (if any) and facsimile number (if any) of the agent, and

(d) an address for service.

- (2) If an address shown in a notice of appearance is not genuine, the applicant may, by leave of the Commission, continue the proceedings as if the appearance had not been entered.

#### **10.4 Respondent submitting to judgment**

- (1) A respondent who intends to take no active part in proceedings may include in the respondent's notice of appearance a statement to the effect that the respondent submits to the making of all orders sought in respect of all claims made, to which may be added the words ", save as to costs".
- (2) Except by leave of the Commission, a respondent who has filed a notice of appearance containing a statement referred to in subrule (1) may not file any document or take any other step in the proceedings.

#### **10.5 Time for appearance**

- (1) A respondent must enter an appearance in proceedings within 7 days after service on the respondent of the originating process in the proceedings.
- (2) Despite subrule (1), if a matter is commenced by notice of motion a respondent must enter an appearance before the date appointed for any hearing or mention and before filing any document.
- (3) In the case of proceedings commenced by a dispute notification, an appearance must be entered on or before the date on which the matter is listed.
- (4) In the case of proceedings commenced by summons, an appearance must be entered:
- (a) on or before the return date specified in the summons, or
  - (b) if the respondent makes an unsuccessful application to have the summons set aside, not later than 7 days after the refusal of the application,
- whichever is the later.

#### **10.6 Late appearance**

- (1) A respondent may enter an appearance at any time without leave.
- (2) Unless the Commission otherwise orders, a respondent who enters an appearance in any proceedings after the time limited for appearance may not file a reply or take any other step in the proceedings later than if an appearance had been entered within that time.



## **10.7 Service**

A respondent filing a notice of appearance must, on the date of entry of appearance or on the next day, serve the notice of appearance on the applicant and on each other party that has an address for service.

## **10.8 Setting aside originating process**

- (1) The Commission may, on notice of motion filed by a respondent, by order:
  - (a) set aside the originating process, or
  - (b) set aside the service of the originating process on the respondent, or
  - (c) declare that the originating process has not been duly served on the respondent, or
  - (d) discharge any order giving leave to serve the originating process outside the State or confirming service of the originating process outside the State, or
  - (e) discharge any order extending the validity for service of the originating process, or
  - (f) protect or release property seized, threatened with seizure, in the proceedings, or
  - (g) declare that the Commission has no jurisdiction over the respondent in respect of the subject-matter of the proceedings, or
  - (h) decline in its discretion to exercise its jurisdiction in the proceedings, or
  - (i) grant such other relief as it thinks appropriate.
- (2) A notice of motion under subrule (1), if filed without entering a notice of appearance:
  - (a) must bear a note "The respondent's address for service is" and state the address, and
  - (b) must be filed within the time limited for entering an appearance.
- (3) The making of an application under subrule (1) is not to be treated as a voluntary submission to jurisdiction.

## **Part 11 Summonses**

### **11.1 Summons to confer**

- (1) A summons to confer under rule 5.5 may only be issued on the initiative of the Commission and:
  - (a) if the Commission is sitting as the Contract of Carriage Tribunal, by the

Presidential Member, and

(b) if the Commission is sitting as an Industrial Committee, by the Chairperson of the Committee.

(2) In this rule, **summons to confer** means a summons to attend and confer as referred to in section 165 (3) (a) of the Act.

### **11.2 Summons in proceedings under section 164**

A summons for production or to give evidence may be issued by the Registrar in proceedings under section 164 of the Act at the request or direction of the Commission or counsel assisting the Commission.

## **Part 12 Costs**

### **12.1 Application**

This Part applies to costs in civil proceedings before the Commission constituted otherwise than as the Industrial Court.

**Note—**

Costs in civil proceedings before the Industrial Court are dealt with in Part 42 of the [Uniform Civil Procedure Rules 2005](#).

### **12.2 Time for dealing with costs**

- (1) The Commission may exercise its functions as to costs at any stage of proceedings or after the conclusion of proceedings.
- (2) When awarding costs, the Commission may direct that costs be paid forthwith even if the proceedings are not concluded.

### **12.3 Assessed costs and other provisions**

When awarding costs, the Commission must order the costs to be assessed, as referred to in section 181 (1) (d) of the Act, unless it is satisfied in the circumstances of the case that it is inappropriate for the costs to be assessed.

### **12.4 Unnecessary appearance**

If a party appears before the Commission:

- (a) in a proceeding in which the party is not interested, or
- (b) in a proceeding in which, according to the practice of the Commission, that party ought not to appear,

the party is not to be allowed any costs of appearance unless the Commission expressly directs that those costs be allowed.

## **12.5 Costs reserved**

- (1) Unless the court orders otherwise, the costs of any application or other step in any proceedings, including:
  - (a) costs that are reserved, and
  - (b) costs in respect of any such application or step in respect of which no order as to costs is made,are to be paid and otherwise dealt with in the same way as the general costs of the proceedings.
- (2) Unless the court orders otherwise, costs referred to in subrule (1) do not become payable until the conclusion of the proceedings.

## **Part 13 Unfair contracts**

### **13.1 Application**

This Part applies to proceedings for an order under section 106 of the Act.

### **13.2 Commencement of proceedings**

- (1) An application to the Industrial Court to exercise the powers conferred on it by section 106 of the Act must be in the approved form.
- (2) The application:
  - (a) must specify, briefly but specifically, the matters of fact and law that form the basis of the application, but not the evidence by which those facts are to be proved, and
  - (b) must contain sufficient information, in the form of a succinct summary, to assist the Industrial Court in its endeavours to settle the matter by conciliation.
- (3) Unless otherwise ordered by the Registrar, the application must be served on the respondent.
- (4) If the respondent does not enter an appearance within the time limited for appearance, the matter may be determined in the respondent's absence.
- (5) The respondent may file and serve a reply, in the approved form, at any time within 21 days after the expiry of the time limited for appearance.
- (6) The respondent's reply:
  - (a) must answer each of the matters raised in the application, and
  - (b) must specify, briefly but specifically, the matters of fact and law on which the

respondent will rely in opposition to the application, but not the evidence by which those facts are to be proved, and

- (c) must contain sufficient information, in the form of a succinct summary, to assist the Industrial Court in its endeavours to settle the matter by conciliation.
- (7) The applicant may file and serve a response, in the approved form, at any time within 14 days after the respondent's reply is filed.
- (8) The applicant's response must answer each of the matters specified in the respondent's reply.
- (9) Any 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 therein.
- (10) If the relevant party is a corporation, such an affidavit may be sworn by any officer or employee of the corporation who is able to verify the matters of fact relied on.

### **13.3 Allocation generally**

The President may allocate conciliation and judicial hearings separately.

### **13.4 Conduct of conciliation conferences**

- (1) Conciliation is to be attempted by means of a conciliation conference conducted after reasonable notice to the parties.
- (2) A conciliation conference is to be conducted by means of a structured process in which the Commission endeavours to assist the parties:
  - (a) to communicate effectively with each other, and
  - (b) to reach agreement on the issues in dispute.
- (3) Subject to subrule (4), the following provisions apply to the conduct of a conciliation conference:
  - (a) each party may be represented, but only by a person who is fully conversant with the matter and has full authority in relation to the settlement of the matter,
  - (b) each party must attend the conciliation with information as to:
    - (i) the costs incurred by the party to date, and
    - (ii) an estimate of the number of hearing days that would be involved, and of the costs that the party would incur, if the matter were to proceed to a hearing,
  - (c) a party who believes that there is a matter of fact or law:
    - (i) that has not already been identified in the pleadings, and

- (ii) that would require determination if the matter were to proceed to a hearing, must document the matter, and file and serve a copy of the relevant documentation, not less than 7 days before the date fixed for conference,
  - (d) a party who contends that any term of a written contract is in issue must file and serve a copy of the contract, together with a brief summary as to the nature of the issue, not less than 7 days before the date fixed for the conference,
  - (e) the applicant must file and serve a statement as to mitigation of damage or loss not less than 7 days before the date fixed for the conference,
  - (f) during the week prior to the conference, the parties must consult with each other for the purpose of clearly identifying all issues and matters in dispute.
- (4) The provisions of subrule (3) may be varied or replaced by practice notes issued under section 15 of the [Civil Procedure Act 2005](#).

### **13.5 Certificate of result of conciliation**

- (1) If during a conciliation conference:
- (a) the matters in dispute are settled, or
  - (b) the member of the Commission conducting the conference forms the opinion that all reasonable attempts to settle the matter by conciliation have been made but have been unsuccessful,
- the member of the Commission conducting the conference must issue a certificate to that effect.
- (2) The member of the Commission conducting the conference must not proceed further unless the matter has also been allocated to that member for orders, directions or determination.

### **13.6 Allocation of matter after certificate issued**

- (1) This rule applies to any proceedings in respect of which the member of the Commission conducting a conciliation conference has issued a certificate under rule 13.5.
- (2) If:
- (a) the certificate indicates that an agreement has been reached that requires the making of orders, and
  - (b) the conference has not been conducted by a judicial member,
- the matter must be allocated to a judicial member for the purpose of making such

orders.

- (3) If the certificate indicates that the member of the Commission conducting the conference has formed the opinion that all reasonable attempts to settle the matter by conciliation have been made but have been unsuccessful, the matter must be allocated to a judicial member for determination.

### **13.7 Conduct of post-conciliation proceedings**

- (1) Unless the Commission otherwise directs, and subject to subrule (3), the following provisions apply to proceedings in respect of which a certificate has been issued under rule 13.5 (1) (b):
- (a) the applicant must file and serve any amendment of the originating process within 14 days after the certificate is issued,
  - (b) the applicant must file and serve all affidavits that the applicant will rely on in the proceedings (other than those referred to in paragraph (e)) within 28 days after the certificate is issued,
  - (c) the respondent must file and serve any objection to the amendment, by way of notice of motion, within 14 days after the amendment is filed,
  - (d) the respondent must file and serve all affidavits that the respondent will rely on in the proceedings within 28 days after the amendment is filed,
  - (e) the applicant must file and serve any affidavits in response to the respondent's affidavits within 14 days after the respondent's affidavits are filed,
  - (f) each witness' evidence in chief must be by way of clearly paginated affidavits and annexures,
  - (g) documents that are 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,
  - (h) 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:
    - (i) stating the name of the intended witness, and
    - (ii) containing an outline of the evidence intended to be adduced,
  - (i) summonses for the production of documents may be made returnable before the Registrar on any date that the Registrar conducts a list,
  - (j) any applications for orders (other than for photocopy access), and any claims for privilege or the like, are to be dealt with by a duty judge on an interlocutory basis,

- (k) within 14 days after all affidavits have been filed, each party must serve on each other party a list of any additional documents, other than those exhibited in accordance with paragraph (g), on which they intend to rely by way of evidence,
  - (l) within 28 days after all affidavits have been filed, each party must advise all other parties as to which of the documents will be the subject of consent to becoming evidence,
  - (m) within 42 days after all affidavits have been filed, each party must file and serve a supplementary court bundle.
- (2) A party's court bundle must be paginated and include an index, but need not include any document contained in another party's court bundle so long as a clear reference to the document is made in the index.
- (3) The provisions of this rule may be varied or replaced by practice notes issued under section 15 of the *Civil Procedure Act 2005*.

## **Part 14 Contract of Carriage Tribunal**

### **14.1 Application of Part**

This Part applies to proceedings before the Contract of Carriage Tribunal (referred to in this Part as the ***Tribunal***).

### **14.2 Filing of documents**

- (1) A person may lodge a document for filing in relation to any proceedings before the Tribunal:
- (a) by delivering it to a Registry officer, or
  - (b) by sending it by post to the Registry's business address, or
  - (c) by sending it to the Registry's DX address.
- (2) Unless acceptance of the document is subsequently refused by the Tribunal, a document is taken to have been filed when it is lodged for filing.
- (3) A Registry officer may refuse to accept a document for filing in the following circumstances:
- (a) in the case of a claim for compensation, if the person on whose behalf the claim is sought to be filed is the subject of a court order declaring the person to be a vexatious litigant,
  - (b) in the case of a document for which a filing fee is payable, if the fee has not been paid or arrangements satisfactory to the registry officer have not been made for its payment.

### **14.3 Case number or other unique identifier to be assigned to originating process**

- (1) When a claim for compensation is accepted for filing, a case number or other unique identifier is to be assigned to the proceedings commenced by the claim.
- (2) On accepting a claim for compensation for filing, a Registry officer must endorse on the claim the case number or other unique identifier assigned to the proceedings commenced by the claim.

## **Part 15 Small claims applications**

### **15.1 Application of Part**

This Part applies to proceedings on an application for the recovery of money under Part 2 of Chapter 7 of the Act in respect of which a request has been made for the application to be dealt with under section 379 of the Act as a small claims application.

### **15.2 Reallocation of proceedings: complexity, difficulty or importance of matters in dispute**

- (1) An application is not to be determined as a small claims application if, at any time before judgment is given, the Industrial Court is of the opinion that the matters in dispute are so complex or difficult, or are of such importance, that the proceedings ought not to be so determined.
- (2) Subrule (1) does not prevent the application from subsequently being dealt with as a small claims application if, following a request by a party, the Industrial Court ceases to be of that opinion.

### **15.3 Conduct of conciliation**

- (1) Conciliation is to be attempted by means of a conciliation conference conducted after reasonable notice to the parties.
- (2) A conciliation conference is to be conducted by means of a structured process in which the Commission endeavours to assist the parties:
  - (a) to communicate effectively with each other, and
  - (b) to reach agreement on the issues in dispute.
- (3) Each party may be represented, but only by a person who is fully conversant with the matter and has full authority in relation to the settlement of the matter.
- (4) The Industrial Court may refuse to list proceedings for hearing if it is satisfied that the parties have not made reasonable attempts to settle the matters in dispute.
- (5) If a party fails to attend a conciliation conference after having been given notice under subrule (1), the Industrial Court may adjourn the conference to another date



and direct that, not later than 5 days before that date, a further notice be given to the party in default.

- (6) The notice under subrule (5) must state whichever of the following is appropriate in the circumstances:
  - (a) that the Industrial Court may make an order dismissing the applicant's claim, either in whole or in part, if the applicant (being the party in default) fails to attend the adjourned conciliation, or
  - (b) that the Industrial Court may uphold the applicant's claim, and make an order against the respondent, if the respondent (being the party in default) fails to attend the adjourned conciliation.
- (7) If the party in default fails to attend the adjourned conciliation after having been given notice under subrule (5), the Industrial Court:
  - (a) may make the relevant order referred to in subrule (6), and
  - (b) may make such further orders as it considers appropriate in the circumstances.

#### **15.4 Procedure generally**

- (1) The procedure to be followed at a hearing of any proceedings is to be determined by the Industrial Court.
- (2) Unless the Industrial Court orders otherwise, proceedings are to be heard and determined on the basis of written statements that have been filed and served on the parties.
- (3) Proceedings may be heard and determined by the Industrial Court even if one or more of the parties is absent.

#### **15.5 Applications subsequent to filing**

Unless the Industrial Court orders otherwise:

- (a) an application that the proceedings not be dealt with as a small claims application, or
- (b) an application in relation to proceedings made after the Court has given judgment in the proceedings,

is to be made by notice of motion.

#### **15.6 Use of telephones etc**

In any proceedings, the Industrial Court may allow a person to appear or give evidence by telephone, audio-visual link or any other means of electronic communication.

## 15.7 Costs

- (1) The Industrial Court may make orders for the payment of costs in any proceedings, including proceedings that are adjourned, discontinued or dismissed.
- (2) The amounts that the Industrial Court may award for such costs include not only the fixed costs prescribed under the *Legal Profession Act 2004* but also any disbursements properly incurred in relation to the matters for which those costs are prescribed.
- (3) Despite subrules (1) and (2), the maximum costs that may be awarded to a party:
  - (a) if proceedings are discontinued or dismissed, whether at a conciliation or at a hearing, or
  - (b) if proceedings are adjourned as a consequence of a party's default or neglect, including a party's failure to comply with a direction of the Industrial Court, or
  - (c) if proceedings on a motion are heard by the Industrial Court, or
  - (d) if judgment is given after a hearing of proceedings,are the costs allowable in accordance with the regulations under the *Legal Profession Act 2004*.

## Part 16 Proceedings for offences

### 16.1 Form of application for order for defendant's appearance

- (1) An application for an order under section 246 of the *Criminal Procedure Act 1986* must state the following:
  - (a) the name and address of the person by whom the proceedings are brought (**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 (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.

## 16.2 Service of order

- (1) If an order is made under section 246 of the *Criminal Procedure Act 1986*, the order and supporting affidavit must be served on the defendant no later than 3 days before the day specified in the order.
- (2) Service of the order and supporting affidavit may be effected in the same way as service of documents in civil proceedings under Part 10 of the *Uniform Civil Procedure Rules 2005*.

## Part 17 Proceedings under section 357 of the Act

### 17.1 Proceedings to recover a civil penalty

- (1) Proceedings to recover a civil penalty under section 357 of the Act must be commenced by an application for summons.
- (2) The application must state the following:
  - (a) the name and address of the person by whom the proceedings are brought (**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 provision of the industrial instrument that the defendant is alleged to have contravened,
  - (e) the nature of the contravention that is alleged,
  - (f) particulars of any payment that it is alleged the defendant has failed to make,
  - (g) whether an application is to be made under section 358 of the Act, or under any other Act, for the recovery of any such payment.
- (3) 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 summons sought.

### 17.2 Issue of summons

When an application for a summons has been filed and it appears to the Registrar to be properly filed, the Registrar must issue the summons, directing the defendant to appear before the Industrial Court on the day and at the place specified.

### **17.3 Service of summons and affidavit verifying**

- (1) The prosecutor must serve the summons and a copy of the affidavit verifying promptly and 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) Such service must be effected in a manner as that specified under Part 10 of the *Uniform Civil Procedure Rules 2005*.
- (3) An affidavit of service of the summons or a notification of the non-service thereof must be filed not less than 3 days before the return date of the summons.
- (4) The Registrar may give directions with regard to service or for substituted service in accordance with these Rules.
- (5) If the summons has not been served by the return date, the Registrar must, on an application made by the prosecutor in accordance with rule 17.1, issue a further summons for the defendant's attendance before the Industrial Court.

### **17.4 Dismissal for want of prosecution**

- (1) If the prosecutor fails to appear or otherwise does not proceed with the matter, the Industrial Court may dismiss the proceeding.
- (2) Any matter which has been dismissed under this rule may be restored to the list by the Industrial Court on such terms as it considers reasonable if it is satisfied that the failure was due to misunderstanding or that there are other special circumstances.
- (3) An application to restore a matter to the list which has been dismissed under subrule (1) must be by notice of motion accompanied by an affidavit as to the matters referred to in subrule (2).

### **17.5 Amendment of process**

- (1) The Industrial Court may allow any process to be amended on such terms as to adjournment, the times within which any matter or thing may be done in connection with the proceedings, and service of notice of the amendment, as the Court thinks fit.
- (2) This power is in addition to the power conferred by section 362 of the Act.

### **17.6 Motion for injunction**

- (1) A motion for an injunction under section 359 of the Act must be commenced by notice of motion served in accordance with the directions of the Industrial Court.
- (2) The notice of motion may be endorsed on or annexed to the originating process and served with it.

## **Part 18 Contempt**

### **Division 1 Contempt in the face or hearing of the Industrial Court**

#### **18.1 Application of Division**

This Division applies to contempt of the Industrial Court that is committed in the face of, or within the hearing of, the Court.

#### **18.2 Arrest**

If it is alleged, or appears to the Industrial Court on its own view, that a person (***the offender***) is guilty of contempt, committed in the face of the Court or within the hearing of the Court, the Court may:

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

#### **18.3 Charge defence and determination**

- (1) If the offender is brought before the Industrial Court, the Court:
  - (a) must inform the offender of the contempt charged, and
  - (b) must give the offender an opportunity to make a defence to the charge.
- (2) After hearing the offender, the Industrial Court:
  - (a) must determine the matter of the charge, and
  - (b) as appropriate, must make an order for the punishment or discharge of the offender.

#### **18.4 Interim custody**

- (1) Pending its determination of the matter of the charge, the Industrial Court:
  - (a) may direct that the offender be kept in such custody as the Court may determine,  
or
  - (b) may direct that the offender be released.
- (2) A direction under subrule (1) (b) may be made on terms, which may include a requirement that the offender give security, in such sum as the Industrial Court directs, for the offender's appearance, in person, to answer the charge.

## **Division 2 Motion or proceedings for punishment**

### **18.5 Application**

This Division applies to any contempt of the Industrial Court for which proceedings are not taken under Division 1.

### **18.6 Procedure generally**

- (1) An application for punishment of contempt committed in connection with proceedings before the Industrial Court must be made by notice of motion in the proceedings.
- (2) An application for punishment of contempt committed otherwise than in connection with proceedings before the Industrial Court must be commenced by application.

### **18.7 Statement of charge**

A statement of charge (that is, a statement specifying the contempt of which the offender is alleged to be guilty) must be included or filed with the notice of motion or application.

### **18.8 Evidence**

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

### **18.9 Service**

The notice of motion or application, the statement of charge and the affidavits must be served personally on the offender.

### **18.10 Arrest**

- (1) This rule applies if a notice of a motion for punishment of a contempt has been filed or proceedings have been commenced for punishment of a contempt.
- (2) If it appears to the Industrial Court that the offender is likely to abscond or otherwise withdraw from the jurisdiction of the Court, the Court may issue a warrant for the offender's arrest and for the offender's detention in custody pending being brought before the Court to answer the charge.
- (3) The terms of the warrant may authorise the offender to be released on giving security, in such sum as the Industrial Court directs, for the offender's appearance, in person, to answer the charge.
- (4) A warrant for an offender's arrest or detention under this Part must be addressed to the Sheriff and be issued under the signature of a judicial member.

### **Division 3 Contempt of the Commission when constituted otherwise than as the Industrial Court**

#### **18.11 Contempt of the Commission when constituted otherwise than as the Industrial Court**

- (1) This rule applies to contempt of the Commission when constituted otherwise than as the Industrial Court.
- (2) If it is alleged, or appears to the Industrial Court on its own view, that a person is guilty of contempt of the Commission, the Court may, by order, direct the Registrar to apply by motion for, or to commence proceedings for, punishment of the contempt.
- (3) Subrule (2) does not affect the right of any person other than the Registrar to commence proceedings for punishment of contempt.
- (4) Proceedings commenced under this rule are to be dealt with in the same way as proceedings commenced under Division 2.