

Industrial Relations (General) Regulation 2020

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New South Wales

Status Information

Currency of version

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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—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Industrial Relations (General) Regulation 2020



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Industrial Relations (General) Regulation 2020*.

2 Commencement

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Industrial Relations (General) Regulation 2015*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.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.

prescribed records—see clause 8(a).

the 1991 Act means the *Industrial Relations Act 1991* (as repealed by the *Industrial Relations Act 1996*).

the Act means the *Industrial Relations Act 1996*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation (other than 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

For the purposes of section 36(3) of the Act, the Industrial Registrar must advise each of the following persons 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 the amount calculated in accordance with regulation 2.13 of Chapter 2 of the [Fair Work Regulations 2009](#) of the Commonwealth from time to time.
- (2) A change in the amount prescribed in accordance with subclause (1) applies 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 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—
 - (i) the period, or the maximum duration of the period, is determined in advance, and
 - (ii) the period, or the maximum duration of the period, is either—
 - (A) 3 months or less, or
 - (B) if the period, or the maximum duration, is more than 3 months—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

For the purposes of section 123(1) of the Act, the following written particulars must 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 the instrument,
- (d) the date 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 adequate other information that enables 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.

Division 2 Employers' records

8 Application

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

- (a) the daily records (the **prescribed records**) that an employer must keep in relation to employees of the employer, in addition to the records of remuneration paid and hours worked by employees required by section 129(1)(a) of the Act, and
- (b) the way in which the prescribed records must be kept, and
- (c) matters for or with respect to the transfer of prescribed records, or copies of prescribed records, to the successor of an employer.

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 of the Act or this Division is an offence punishable by a maximum penalty of 20 penalty units.

9 Content of records—general

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 the instrument,
- (e) if the employee is employed full-time or part-time,
- (f) if 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 [Apprenticeship and Traineeship Act 2001](#)—the date the person became an apprentice or trainee,
- (h) the date the employee was first employed with the employer,
- (i) if the employee's employment is terminated—the date of termination.

10 Content of records—remuneration and hours worked

- (1) The prescribed records relating to an employee must contain the following particulars about the remuneration paid and hours worked by the employee—
 - (a) if the industrial instrument that applies to the employee prescribes the number of hours to be worked per week, day or other period—the number of hours worked by the employee during each of the periods,
 - (b) if the industrial instrument that applies to the employee limits the daily hours of work and provides for the payment of daily overtime—
 - (i) the number of hours worked by the employee during each day, and
 - (ii) the time the employee started and stopped work each day,
 - (c) if the industrial instrument that applies to the employee 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 industrial instrument that applies to the employee prescribes piece-work—
 - (i) the number and description of pieces made by the employee, and
 - (ii) 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 the remuneration,
 - (f) other particulars that are necessary to show that the requirements of the industrial instrument that applies to the employee 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) the 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.
- (3) In this clause—

defined benefit superannuation fund means a superannuation fund that has governing rules that provide that—

- (a) one or more members of the fund are entitled, on retirement, to be paid a benefit defined, wholly or in part, by reference to either or both of the following—
 - (i) the amount of the member's annual salary, either at the date of the member's retirement or at a date before retirement or averaged over a period of employment before retirement,
 - (ii) a specified amount, and
- (b) if the fund is not a public sector fund— at least some of the contributions paid in relation to a particular member of the fund—
 - (i) are not paid into, or accumulated in, a fund for the member, and
 - (ii) are paid into, or accumulated in, a fund with contributions paid in relation to other members of the fund.

public sector fund means a superannuation fund established—

- (a) by a law of the Commonwealth or of a State or Territory, or
- (b) under the authority of—
 - (i) the Commonwealth or the government of a State or Territory, or
 - (ii) a municipal corporation, another local governing body or a public authority

constituted by or under a law of the Commonwealth or of a State or Territory.

13 Keeping records

- (1) The prescribed records relating to an employee must be—
 - (a) in a legible form in the English language, or
 - (b) in an electronic or other form that is—
 - (i) readily accessible, and
 - (ii) convertible into a legible form in the English language.
- (2) Prescribed records must be made available to an inspector or other person to exercise any power conferred by the Act to inspect records in a 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 must keep the transferred records as if the records had been made by the new employer at the time the records 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 the 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 Oaths to be taken by members of Commission

A member of the Commission appointed after the commencement of the Act must, on appointment, take the oath of allegiance and the official oath.

16 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 the industrial or other organisations determined by the Commission in respect of the Committee.

- (2) The number of members to be nominated by each organisation is to be determined by the Commission.
- (3) Nominations are to be made within the time, and in accordance with the requirements, notified to the relevant organisation 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.

17 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 must, on appointment, take the official oath.

18 Expenses of persons summonsed

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

19 Functions of Industrial Registrar

- (1) The Industrial Registrar may exercise the following functions in connection with a matter before the Industrial Registrar—
 - (a) subject to the Act, determine the Industrial Registrar's 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 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—
- (a) delegated to the Industrial Registrar by the Commission, or
 - (b) conferred on the Industrial Registrar by the Act, by any other provision of the regulations or by the rules of the Commission.

Part 6 Commission fees

20 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 the matter in Column 2 of Schedule 1, or

(b) if the person is a corporation and a fee is specified in respect of the matter in Column 3 of Schedule 1—the fee specified.

(2) Despite subclause (1), the fee specified in Column 2 of Schedule 1 is payable by a corporation that produces evidence satisfactory to the Industrial Registrar—

(a) that the corporation's 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 the corporation's turnover in the first financial year of the corporation is likely to be less than \$200,000.

21 Payment of fees

(1) A fee, other than a hearing allocation fee or hearing fee, is payable when the document or service to which the fee relates is filed or rendered.

(2) Despite subclause (1), the Industrial Registrar may require the fee to be paid before the document is filed or service is rendered.

22 Persons by and to whom fees are payable

(1) A fee, other than a hearing allocation fee or hearing fee, is payable to the Industrial Registrar by the person at whose request the document or service to which the fee relates is filed or rendered.

(2) If the document is filed or service is rendered at the request of a person acting as solicitor or agent for another person, the person and the party are jointly and severally liable for payment of the fee.

23 Payment of hearing allocation fees

(1) A hearing allocation fee in relation to 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 an order as to the payment of the fee—by the parties and in the proportions so ordered.

(2) If a person is acting as solicitor or 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 an interlocutory hearing.

(4) A hearing allocation fee is payable on the first of the following to occur—

(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.

24 Payment of hearing fees

- (1) A hearing fee in relation to any proceedings is payable—
 - (a) by the applicant or appellant, or
 - (b) if the Commission or the Industrial Registrar makes an order as to the payment of the fee—by the parties and in the proportions ordered.
- (2) If a person is acting as solicitor or 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 that has as its sole purpose the delivery of a reserved judgment.
- (4) A hearing fee is not payable in respect of a 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 is 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.

25 General power to waive, postpone and remit

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

26 Circumstances in which fees not chargeable

- (1) Unless expressly provided by Schedule 1, fees under Schedule 1 are not payable by the Crown, or by a person acting on behalf of the Crown, in proceedings if any of the following is a party—
 - (a) the Crown,
 - (b) a Minister of the Crown,

- (c) a statutory body the expenditure of which is paid out of the Consolidated Fund.
- (2) Subclause (1) does not apply to SafeWork NSW.
- (3) Subclause (1) does not prevent the recovery by the Crown, or the person or body, of any fees that would, had the fees been paid by the Crown or the person or body, have been so recoverable.
- (4) The Industrial Registrar may require a person to provide evidence for the purpose of deciding whether a statutory body's expenditure is paid out of the Consolidated Fund.
- (5) Unless expressly provided by Schedule 1, fees under Schedule 1 are not payable by—
 - (a) an industrial organisation, or
 - (b) an association registered under Chapter 6 of the Act.

Part 7 Industrial organisations

27 Copies of certificates of registration

For the purposes of section 221(3) of the Act, the Industrial Registrar may issue to an industrial organisation a copy of the certificate of registration issued to the industrial organisation.

28 Rules to provide for seal of organisation

The rules of a State organisation must provide for a seal of the organisation to—

- (a) be kept by a member of the committee of management of the organisation, and
- (b) be affixed to a document with the authority of at least 2 members of that committee.

29 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 except 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 the election of the holders of offices under the Act if the Industrial Registrar is satisfied that the rules would comply substantially with those rules except for the fact that the rules cover persons employed in the Australian Capital Territory.

30 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—

- (a) notifying the organisation of the Industrial Registrar's intention to take the relevant action, and
- (b) 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.

31 Regulation of industrial organisations (other than State organisations)

For the purposes of section 291 of the Act, the provisions of section 280 of the Act apply to industrial organisations that are not State organisations.

32 Deemed registration of Newcastle Trades Hall Council

- (1) For the purposes of 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,
 - (d) section 266 in so far as it applies to section 263,
 - (e) sections 267–271,
 - (f) 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.

33 Election of officers of State organisation

For the purposes of section 249 of the Act, the provisions of Schedule 3 apply to the election of officers of State organisations.

Part 8 Public vehicles and carriers

34 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 to temporarily take the place of a person directly involved in the business who is sick, on annual leave or otherwise temporarily unavailable,
- (b) riding on a motor vehicle by a person who is employed for the purpose of—
 - (i) loading or unloading goods being transported by means of the motor vehicle, or
 - (ii) assisting in loading or unloading goods being transported by means of the motor vehicle.

(2) Subclause (1) applies whether or not the person is employed—

- (a) under a contract of employment, or
- (b) by the carrier.

(3) 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.

35 Notification of proposed contract agreements to which groups of carriers are parties

For the purposes of section 325A(3) of the Act, the Industrial Registrar must advise the following persons of a proposed contract agreement that is notified to the Industrial Registrar and under which a group of carriers is a party—

- (a) the secretary or chief executive of each State peak council,
- (b) the secretary or chief executive of an association of contract carriers if—
 - (i) the association is a party to an existing contract determination or an existing contract agreement, and
 - (ii) the existing determination or existing agreement relates to the conditions of engagement of carriers whose contracts the proposed contract agreement will apply to,
- (c) the secretary or chief executive of an association of employing contractors if—
 - (i) the association is not to be a party to the proposed contract agreement, and

- (ii) the association is a party to an existing contract determination or an existing contract agreement, and
- (iii) the existing determination or existing agreement relates to the conditions of engagement of carriers whose contracts the proposed contract agreement will apply to.

36 Publication of notice of application for registration of association of contract drivers or carriers

For the purposes of section 335(3) of the Act, notice of an application under that section must be published on the website of the Commission and in such other manner as the Industrial Registrar is satisfied is likely to bring the notice to the attention of relevant members of the public within 14 days after the application is lodged.

37 Objection to registration of association of contract drivers or carriers

For the purposes of section 336(1) 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 published.

38 Withdrawal of registration of association at request of members

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

Part 9 Miscellaneous

39 Authority to prosecute

For the purposes of section 399(1)(c) of the Act, an industrial organisation concerned in the industry to which the proceedings relate is prescribed.

40 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 Secretary of the Department of Premier and Cabinet.

Maximum penalty—5 penalty units.

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

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) A 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 of the other person.
- (2) The other person is taken to be the employer of the person who performs that work.
- (3) In this clause—

security officer work means 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, and
- (b) not including the work of persons engaged solely as general office or clerical workers.

security transport work means work for which a rate of pay is fixed by the *Transport Industry (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).

43 Maximum amount payable on small claims applications

For the purposes of section 379(3)(b) of the Act, the amount of \$20,000 is prescribed.

43A (Repealed)**44 Savings**

Any act, matter or thing that, immediately before the repeal of the *Industrial Relations (General) Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Commission fees

clause 20

Fees for proceedings before Commission

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Filing an application under the Act, section 84	\$88	—
2 Filing notice of leave to appeal to the Full Bench of the Commission under the Act, section 187 in relation to a decision of the Commission under the Act, Chapter 2, Part 6	\$288	\$576

Miscellaneous fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Issuing a summons for production, or to give evidence, or both	\$109	\$218
2 Opening or keeping open the registry or part of the registry—		
(a) on a Saturday, Sunday or public holiday, or	\$781	\$1,562
(b) otherwise—		
(i) before 8:30am or after 4:30pm, or	\$781	\$1,562

	(ii) between 8:30am and 9am or between 4pm and 4:30pm	\$84	\$168
3	Supplying a certified copy of a judgment or order, or of the written opinion or reasons for opinion of a member of the Commission or the Industrial Registrar Note—	\$64	—
	Fees under this item are not chargeable to a party to proceedings for the first copy supplied to the party.		
4	Supplying an uncertified copy of a judgment or order, or of the written opinion or reasons for opinion of a member of the Commission or the Industrial Registrar Note—	\$47	\$94
	Fees under this item are not chargeable to a party to proceedings for the first copy supplied to the party.		
5	Making a copy of a document, otherwise than as provided for by items 3 and 4—		
	(a) for the first 20 pages, and	\$13	—
	(b) for each 10 pages, or part of 10 pages, after the first 20 pages	\$7	—
	Note 1—		
	Except as provided in Note 2, fees under this item are chargeable—		
	(a) to the Crown or a person acting on behalf of the Crown, and		
	(b) to an industrial organisation or association registered under the Act, Chapter 5.		
	Note 2—		
	Fees under this item are not chargeable to a person if the Secretary of the Treasury, or the President of the Anti-Discrimination Board, has authorised making the copy without charge.		

Supplying a duplicate recording of sound-recorded evidence—per compact disc

Note 1—

Except as provided in Note 2, fees under this item are chargeable—

(a) to the Crown or a person acting on behalf of the Crown, and

6		\$55	—
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(b) to an industrial organisation or association registered under the Act, Chapter 5.

Note 2—

Fees under this item are not chargeable to a person if the Secretary of the Treasury, or the President of the Anti-Discrimination Board, has authorised supplying the recording without charge.

7 Supplying a copy of the transcript of proceedings—

(a) where the matter being transcribed is under 3 months old—

(i) for the first 8 pages, and \$95 —

(ii) for each page after the first 8 pages, or \$11 —

(b) where the matter being transcribed is 3 months old or older—

(i) for the first 8 pages, and \$116 —

(ii) for each page after the first 8 pages \$13 —

Note 1—

Except as provided in Note 2, fees under this item are chargeable—

(a) to the Crown or a person acting on behalf of the Crown, and

(b) to an industrial organisation or association registered under the Act, Chapter 5.

Note 2—

Fees under this item are not chargeable to a person if the Secretary of the Treasury, or the President of the Anti-Discrimination Board, has authorised supplying the copy without charge.

8	For retrieval from archives of a document or file—per file or box of files	\$85	—
	Providing a service for which a fee is not otherwise imposed by this Schedule		
9	Note—	\$46	\$92
	A fee may not be imposed under this item except with the approval of the Industrial Registrar.		

Schedule 2 Penalty notice offences

1 Application of Schedule

(1) For the purposes of section 396 of the Act—

- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable for the penalty notice is the amount specified opposite the provision.

(2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—

- (a) that limited kind of offence, or
- (b) an offence committed in those limited circumstances.

Column 1	Column 2
Provision	Penalty \$
Offences under the Act	
Section 67(2)	220
Section 78(1)	220
Section 78(2)	220
Section 78(3)	220
Section 123(1)	220
Section 129(6)	220
Section 341(5)	220
Section 360(1)	220
Section 360(2)	220

Section 361(1) 220

Section 387(2) 220

Offences under this Regulation

Clause 40(1) 220

Schedule 3 Conduct of elections for office

(Clause 33)

1 Definitions

In this Schedule—

election means an election for a particular office in an organisation to which this Schedule applies.

returning officer means the Electoral Commissioner, or—

- (a) if the Industrial Registrar has approved an independent returning officer for the election under clause 4(4)(b)—that independent returning officer, or
- (b) if the Industrial Registrar has approved some other person or body to conduct the election under clause 6—that other person or body.

secretary of an organisation means (if the secretary is a candidate in the election concerned) another officer of the organisation nominated by the returning officer.

2 Application of Schedule

- (1) This Schedule applies to elections conducted under Division 3 of Part 4 of Chapter 5 of the Act.
- (2) If the rules of an organisation provide, under section 240 of the Act, for an election to be held by a method other than secret postal ballot, this Schedule is subject to those rules.
- (3) Nothing in this Schedule limits any action or directions of the person conducting an election under clause 4(5) in relation to the election.

3 Elections for offices compulsory

Each office in an organisation must be filled by election.

4 Conduct of elections

- (1) When an election for an office in an organisation is required to be held, the organisation must apply in writing to the Industrial Registrar asking the Industrial Registrar to arrange the conduct of the election in accordance with the rules of the

organisation.

- (2) For the purposes of subclause (1), the application may be made—
 - (a) by or on behalf of the committee of management of the organisation, or
 - (b) as provided by the rules of the organisation, or
 - (c) by a number of the members of the organisation that is not less than 1,000 or 10% of all the members of the organisation, whichever is the lesser.
- (3) If an organisation makes, or purports to make, an application under this clause, the Industrial Registrar must, in deciding whether to authorise the holding of the election—
 - (a) make any inquiries the Industrial Registrar considers necessary, and
 - (b) examine the rules of the organisation to the extent the Industrial Registrar considers necessary.
- (4) If the Industrial Registrar decides the application has been appropriately made, the Industrial Registrar must inform the organisation of the decision and whether the election is to be conducted by—
 - (a) the Electoral Commissioner, or
 - (b) a person appointed to the panel of independent returning officers under clause 11.
- (5) The person conducting an election under this clause may, despite anything contained in the rules of the relevant organisation, take action and give directions the person considers necessary—
 - (a) in relation to the conduct of the election, or
 - (b) to ensure that irregularities do not occur in relation to the election, or
 - (c) to remedy any apparent procedural defects in the rules of the organisation.
- (6) An election conducted under this clause is not invalidated because of—
 - (a) a breach of the rules of the organisation in—
 - (i) an act done under this clause, or
 - (ii) an act done in compliance with a direction given under this clause, or
 - (b) an irregularity in the request to conduct the election.
- (7) A person must not—
 - (a) fail to comply with a direction given under subclause (5), or

- (b) obstruct or hinder a person conducting an election under this clause or carrying out a direction given under subclause (5).

Maximum penalty—50 penalty units.

- (8) If the person conducting an election under this clause dies or becomes unable to complete the conduct of the election or ceases to be a person qualified to conduct the election, the Industrial Registrar must make arrangements or give directions for the completion of the conduct of the election by another qualified person.

5 Holding of elections every 4 years

- (1) The Industrial Registrar must inform the Supreme Court if an organisation fails to comply with the rules concerning elections and terms of office.
- (2) The Supreme Court may suspend the registration of an organisation if the organisation fails to comply with the requirements of the Act in relation to the holding of elections at least once every 4 years after the organisation is registered under the Act.

6 Industrial Registrar may issue exemptions concerning returning officer

- (1) An organisation may apply to the Industrial Registrar for approval to appoint a person or body other than a person referred to in clause 4(4) to conduct an election.
- (2) On being satisfied by the organisation that it is appropriate that a person or body other than a person referred to in clause 4(4) is appointed to conduct the election for the organisation, the Industrial Registrar may issue a certificate to the organisation that names the person or body that is to conduct the election.
- (3) In making a decision under this clause, the Industrial Registrar may have regard to—
 - (a) the size, structure and resources of the organisation, and
 - (b) any other matters the Industrial Registrar considers relevant.

7 Retention of ballot-papers

- (1) Despite anything in the rules of an organisation, the organisation and every officer and employee of the organisation who is able to do so, and the person or body that conducts an election for an office in the organisation under this Schedule, must take all reasonably necessary steps to ensure all ballot-papers, envelopes, lists and other documents relevant to the election (the **election documents**) are retained.
- (2) The returning officer must retain the election documents for one year after the completion of the election.

Maximum penalty—50 penalty units.

8 Proof of election to office

- (1) A certificate issued by the Industrial Registrar stating that a specified person is, or was at any specified time, elected to or the holder of a specified office in an organisation is prima facie evidence of that fact without proof of the Industrial Registrar's signature.
- (2) The Industrial Registrar may issue a certificate as evidence that—
 - (a) the person has been elected to the office in the organisation, and
 - (b) the requirements of the rules of the organisation relating to the election have been complied with.
- (3) A person who has been issued with a certificate under this clause stating that the person has been elected to, or is the holder of, a specified office in an organisation must return the certificate to the Industrial Registrar for cancellation within 14 days of—
 - (a) ceasing to hold the specified office, or
 - (b) being requested to do so by the Industrial Registrar.

Maximum penalty—20 penalty units.

9 Right to participate in ballots

Except as stated by reasonable provisions in the rules of an organisation in relation to enrolment, every financial member of an organisation has a right to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organisation, or of a branch, section or other division of the organisation in which the person is a member.

10 Members' requests for information concerning elections and ballots

- (1) A financial member of an organisation may ask the returning officer to give the member information for the purpose of determining whether there has been an irregularity in relation to—
 - (a) an election for an office in the organisation, or
 - (b) a ballot taken for the purpose of submitting a matter to a vote of the members of the organisation.
- (2) The returning officer must comply with the request.

11 Panel of independent returning officers

- (1) There is to be a panel of independent returning officers.

- (2) The Industrial Registrar may appoint persons to the panel who, in the opinion of the Industrial Registrar—
 - (a) are independent of any organisation registered under Chapter 5 of the Act, and
 - (b) have the requisite knowledge and experience to conduct elections for organisations in a proper and efficient manner.
- (3) Appointments to the panel are for a period of 2 years and may be renewed by the Industrial Registrar.
- (4) The Industrial Registrar may remove a person from the panel at any time.

12 Notification of election to returning officer

The Industrial Registrar must, as soon as practicable after authorising the conduct of an election, notify the person who is to be the returning officer for the election.

13 Notice of election by returning officer

- (1) On receiving notification of an election, the returning officer must—
 - (a) publish an election notice in a newspaper circulating throughout the State, or
 - (b) send an election notice by post to all members of the organisation who appear to be entitled to vote in the election.
- (2) The returning officer may also publish an election notice as follows—
 - (a) if the registered office of the organisation is situated more than 80 kilometres from the Sydney GPO—in a newspaper circulating in the local area of the registered office,
 - (b) in the official journal of the organisation.
- (3) The election notice must provide details of the following—
 - (a) that the election is to be conducted by the returning officer,
 - (b) call for nominations for the election,
 - (c) where nomination forms may be obtained,
 - (d) the time and date for the close of nominations in the election,
 - (e) the place where nominations for the election may be lodged,
 - (f) the requisite qualifications (if any) of candidates in the election and the requisite qualifications of a person nominating a candidate,
 - (g) the time and date for the close of the roll in the election,

- (h) the time and date for the close of the ballot in the election.

14 Time limits for election

- (1) The dates specified in an election notice for the close of nominations, the close of the roll and the close of the ballot in the election must, as far as practicable, comply with the following requirements—
 - (a) there must be a period of at least 3 weeks between the date the election notice is published or posted and the date for the close of nominations,
 - (b) the date for the close of the roll must be no later than the date for the close of nominations,
 - (c) there must be a period of at least 4 weeks between the date for the close of nominations and the date for the close of the ballot.
- (2) The returning officer may, if satisfied that it is necessary to avoid a failure of the election, publish a further election notice to extend the time and date for any of the following—
 - (a) the close of nominations,
 - (b) the close of the roll,
 - (c) the close of the ballot.
- (3) More than one extension may be made in respect of an election.

15 Nominations

- (1) A completed nomination for an election must contain the following—
 - (a) the full name, residential address, telephone number and date of birth of the candidate,
 - (b) the full names, residential addresses and signatures of the required number of nominators, each of whom must be entitled to vote in the election,
 - (c) the office for which the candidate is standing, along with the candidate's written consent to the nomination.
- (2) A person may not nominate more candidates for election than the number of candidates to be elected.
- (3) If the returning officer is of the opinion that there is an anomaly in a nomination, the returning officer must, as soon as practicable after receiving the nomination, give written notice of that fact to the candidate.
- (4) The returning officer may, in order to assess the eligibility of a candidate and the

nominators, request the secretary of the relevant organisation to provide specified information regarding the candidate and nominators.

- (5) The secretary of the organisation must comply with a request under subclause (4) as soon as practicable after it is made.
- (6) A nomination, and any corrections to the nomination, must be received by the returning officer before the time and date fixed for the close of nominations.
- (7) The returning officer must reject a nomination received after the time and date specified for the close of nominations.
- (8) A candidate who has been nominated in an election may, by notice in writing addressed to the returning officer, withdraw the nomination at any time before the close of nominations in the election.

16 Uncontested elections

If the number of persons who have been properly nominated as candidates in an election by the close of nominations does not exceed the number of persons to be elected, each of the nominated persons is elected.

17 Contested elections

If the number of persons who have been properly nominated as candidates in an election by the close of nominations exceeds the number of persons to be elected, a ballot must be held.

18 Candidate information sheets

- (1) This clause applies to an election to which the returning officer determines that this clause applies.
- (2) A candidate in an election may, at any time before the close of nominations, submit a statutory declaration to the returning officer that contains information in an approved form for inclusion in a candidate information sheet.
- (3) If a ballot is to be held in an election, the returning officer must prepare a candidate information sheet containing the information submitted under subclause (2).
- (4) In preparing the candidate information sheet, the returning officer may, if the returning officer considers that the information submitted under subclause (2)—
 - (a) is not appropriate for inclusion in a candidate information sheet—omit the information from the candidate information sheet, or
 - (b) is false or misleading in a material particular—omit or rectify the information from or in the candidate information sheet, or

(c) is of a length greater than that permitted by the approved form—reduce the length of the information included in the candidate information sheet.

(5) If practicable, the returning officer is to consult the candidate before omitting, rectifying or reducing the length of information under subclause (4).

(6) The order of appearance of candidates' details in the candidate information sheet is to be the same order as the appearance of candidates on the ballot-paper.

19 Roll

(1) If a ballot is to be held in an election, the returning officer must, as soon as practicable after the close of nominations, notify the secretary of the organisation that—

(a) a ballot is to be held, and

(b) that the secretary is required to deliver, within 7 days—

(i) a list of members entitled to vote in the election, and

(ii) a suitably sized envelope label for each member included on the roll that sets out the name and address of the person.

(2) The list must be compiled from the membership register kept under section 278 of the Act.

(3) The list must include the following details for each member—

(a) the member's surname and given names,

(b) the member's residential address.

(4) The members must be listed in alphabetical order by surname and be consecutively numbered.

(5) The secretary of the organisation must certify the list as correct.

(6) The certified list constitutes the roll for the election.

(7) A candidate for the election may be given a copy of the roll for the election, or may inspect the roll, if the candidate has been authorised to do so by the Industrial Registrar under section 278(6) of the Act.

(8) A reference in this clause to a member is, in the case of a corporation, a reference to the person who is entitled to vote on behalf of the member in the election.

20 Printing of ballot-papers

(1) If a ballot is to be held in an election the returning officer must, as soon as practicable

after the close of nominations—

- (a) determine the order in which the candidates' names are to be listed on the ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 101 of the [Electoral Act 2017](#), and
- (b) arrange for sufficient ballot-papers to be printed so that a ballot-paper may be forwarded to each person included on the roll, and
- (c) if a candidate information sheet has been prepared for the election—arrange for sufficient copies of the information sheet to be printed so that a copy may be forwarded to each person included on the roll.

(2) The ballot-paper for an election must contain the following—

- (a) the names of the candidates arranged in the order determined in accordance with subclause (1)(a), with a square opposite each name,
- (b) if, in the opinion of the returning officer, the names of two or more candidates are so similar that the names are likely to cause confusion—additional information to enable each voter to distinguish between those candidates,
- (c) directions having regard to the system of voting required by the rules of the organisation for—
 - (i) recording a vote on the ballot-paper, and
 - (ii) returning the ballot-paper to the returning officer.

(3) The name of a candidate to be included on the ballot-paper must only include 1 given name, which may be a recognised abbreviation or derivative of a full given name if the candidate nominated the abbreviation or derivative on the nomination form and the returning officer is satisfied that it is a recognised abbreviation or derivative.

21 Distribution of ballot-papers

The returning officer must, as soon as practicable after the printing of the ballot-papers, send the following by post to each person included on the roll for the election—

- (a) a ballot-paper initialled or otherwise marked in a way the returning officer considers appropriate to verify its authenticity,
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words “Name and address of voter” and “signature of voter”, with appropriate space for the voter to fill out the details and other information the returning officer requires in order to identify the voter on the certified roll,
- (c) if applicable, a copy of the candidate information sheet.

22 Duplicate ballot-papers

- (1) If a person to whom a ballot-paper has been sent satisfies the returning officer by statutory declaration that the ballot-paper has been spoiled, lost or destroyed and that the person has not already voted at the election, the returning officer may, at any time before the close of the ballot, send to or give the person a duplicate ballot-paper and envelope.
- (2) The returning officer must keep a record of duplicate ballot-papers.

23 Recording of vote

A person on the roll for an election who wishes to vote at the election must, on receipt of a ballot-paper—

- (a) record a vote on the ballot-paper in accordance with the directions shown on the ballot-paper, and
- (b) place the completed ballot-paper, folded so that the vote cannot be seen, in the envelope addressed to the returning officer that was provided with the ballot-paper, and
- (c) seal the envelope, and
- (d) complete the person's name and address on and sign the back of the envelope, and
- (e) return the envelope to the returning officer so that the ballot-paper will be received by the returning officer before the close of the ballot.

24 Receipt of ballot-papers

- (1) The returning officer must examine the name on the back of an envelope purporting to contain a ballot-paper and received before the close of the ballot, and—
 - (a) if the returning officer is satisfied that a person of that name is included on the roll for the election—accept the ballot-paper in that envelope for scrutiny without opening the envelope and draw a line through that person's name on the roll, or
 - (b) if the returning officer is not so satisfied or if a name, address or signature does not appear on the back of the envelope—reject the ballot-paper in the envelope without opening the envelope.
- (2) If it appears to the returning officer that the signature on the back of an envelope is not the signature of the person whose name and address appear on the envelope, the returning officer may make such inquiries as the returning officer thinks fit.
- (3) If, after making those inquiries, the returning officer is satisfied that the signature is not the signature of the person, the returning officer must reject any ballot-paper in the envelope without opening the envelope.

- (4) In respect of any envelope containing voting material that is returned to the returning officer by the postal authorities as an undelivered article prior to the close of the ballot—
 - (a) the returning officer must immediately inform the secretary of the organisation concerned of that fact in order to find out whether a current postal address is available for the member concerned, and
 - (b) the secretary of the organisation must immediately notify the returning officer of any such current address.
- (5) The returning officer must reject an envelope purporting to contain a ballot-paper if the envelope—
 - (a) is received after the close of the ballot, or
 - (b) is received unsealed.
- (6) The returning officer must not open an envelope, or inspect a ballot-paper contained in the envelope, that must be rejected under subclause (5).

25 Result of ballot

The result of the ballot in an election is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

26 Scrutineers

- (1) Each candidate in a ballot is entitled to appoint, by notice in writing, scrutineers to represent the candidate at all stages of the election following the close of nominations.
- (2) The maximum number of scrutineers that may be appointed by a candidate is to be determined by the returning officer.
- (3) A candidate in an election is not eligible to act as a scrutineer in connection with any ballot being contested by the candidate.

27 Scrutiny of votes

- (1) At the scrutiny of votes in a ballot, a ballot-paper is to be rejected as informal if—
 - (a) the ballot-paper is not authenticated by the relevant initial or other mark, or
 - (b) the ballot-paper has on it any mark or writing which, in the opinion of the returning officer, could enable a person to identify the voter who completed it, or
 - (c) the ballot-paper has not been completed in accordance with the directions shown on it.

- (2) A ballot-paper is not to be rejected as informal merely because there is any mark or writing on it that is not properly authorised or required (not being a mark or writing referred to in subclause (1)(b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper.
- (3) The scrutiny of votes in a ballot must be conducted as follows—
 - (a) the returning officer is to produce the unopened envelopes containing the ballot-papers accepted for scrutiny under clause 24(2)(a) in respect of the ballot, other than any envelopes purporting to contain a ballot-paper rejected under clause 24(4),
 - (b) the returning officer is then to open each envelope, extract the ballot-paper and, without unfolding the ballot-paper, place the ballot-paper in a locked ballot box,
 - (c) when the ballot-papers from all the envelopes have been placed in the ballot box, the returning officer is to then unlock the ballot box and remove the ballot-papers,
 - (d) the returning officer is to then examine each ballot-paper and reject those ballot-papers that are informal,
 - (e) the returning officer is to then count the votes and ascertain the result of the election.
- (4) The returning officer is to count the votes in all ballots in the order of seniority of the office concerned.
- (5) If a candidate is permitted to nominate for more than 1 office, a candidate who has nominated for more than 1 office is to be excluded from any uncounted ballots following the candidate's election to an office.

28 Notification of election results

The returning officer must, following completion of the election, give written notification of the result of the election to—

- (a) the Industrial Registrar, and
- (b) the secretary of the relevant organisation.

29 Death of candidate

If a candidate dies after the close of nominations and before the close of the ballot for an election—

- (a) the returning officer is to publish a notification of the death in the same way as the election notice, and
- (b) all proceedings in the election taken after the Industrial Registrar notified the

returning officer that the election was required to be held are taken to have no effect and the proceedings are to be taken again.

30 Decision of returning officer final

Any decision that the returning officer is required or permitted to make under this Schedule relating to the taking of a ballot in an election is final.

31 Costs of election

- (1) After the completion of an election, the returning officer is to notify the Industrial Registrar of all expenses incurred by the returning officer in the conduct of the election.
- (2) The Industrial Registrar is to provide the organisation with a certificate setting out—
 - (a) the amount of the expenses of the election, including relevant particulars of the items concerned, that is to be borne by the organisation in accordance with section 251(1) of the Act, and
 - (b) the person or persons to whom payment is to be made, and
 - (c) the time within which payment is to be made.
- (3) Before an election is completed, the returning officer may require the organisation to make progressive payments to the returning officer for expenses incurred by the returning officer in the election and necessary adjustments are to be made after the completion of the election to take account of those progressive payments.
- (4) If the expenses of an election are not duly paid in accordance with this clause, the persons to whom they are payable may recover them as a debt in a court of competent jurisdiction.