

Industrial Relations Commission Rules 2022

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New South Wales

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Industrial Relations Commission Rules 2022



New South Wales

Part 1 Preliminary

1.1 Name of Rules

These Rules are the *Industrial Relations Commission Rules 2022*.

1.2 Commencement

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

1.3 Definitions

In these Rules—

application for an award, for Part 6, Division 1—see rule 6.1.

approved form means a form approved by the Chief Commissioner under rule 2.4.

award, for Part 6, Division 1—see rule 6.1.

Commission website means the NSW industrial relations website within the meaning of the Act, section 208A.

file means to file with the Registry.

originating process means a document required to commence proceedings, or a type of proceedings, in the Commission.

Registrar means the Industrial Registrar.

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

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

small claims application, for Part 8—see rule 8.1.

the Act means the *Industrial Relations Act 1996*.

UCPR means the *Uniform Civil Procedure Rules 2005*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions affecting the interpretation and application of these Rules.

1.4 Commission may dispense with Rules or give other directions about practice and procedure

The Act, sections 185B and 185C allow the Commission to do the following in relation to particular proceedings in the Commission—

- (a) dispense, by order, with a requirement of the rules of the Commission if satisfied it is appropriate to do so in the circumstances of the case,
- (b) give directions in relation to an aspect of practice or procedure not provided for by or under the Act, the *Civil Procedure Act 2005* or another Act.

Note—

The *Civil Procedure Act 2005*, sections 14 and 16 also give the Commission similar powers in relation to the UCPR provisions that apply to Commission proceedings.

1.5 Application of *Civil Procedure Act 2005*

The *Civil Procedure Act 2005*, section 4 and Schedule 1 provide for that Act, Parts 3–9 to apply in relation to proceedings in the Commission referred to in that Act, Schedule 1, unless excluded by the UCPR.

Note—

The UCPR do not currently exclude any provisions of the *Civil Procedure Act 2005* in relation to proceedings in the Commission.

1.6 Application of UCPR

- (1) The UCPR, rule 1.5 provides that the UCPR generally apply to proceedings in the Commission.
- (2) The following table sets out the UCPR provisions that do not apply to proceedings in the Commission—

UCPR provisions that do not apply to Commission proceedings

Part 5—Preliminary discovery and inspection

Part 6—Commencing proceedings and appearance

Part 16—Default judgment

Part 17—Admissions, except to the extent to which the Commission orders the Part to apply

Part 20—Resolution of proceedings without hearing

Part 21—Discovery, inspection and notice to produce documents, except to the extent to which the Commission orders the Part to apply

Part 22—Interrogatories

Part 23—Medical examinations and inspection of property

Part 31, Division 1—Evidence at hearing, except rules 31.1, 31.2, 31.3, 31.4, 31.11, 31.12 and 31.16A

Part 31, Division 2—Provisions applicable to expert evidence generally

Part 32—*Trans-Tasman Proceedings Act 2010* of the Commonwealth

Part 34—Notices to produce at hearing, except to the extent to which the Commission orders the Part to apply

Part 37—Time to pay and payment by instalments

Part 38—Examination of judgment debtor etc

Part 39—Enforcement of judgments

Part 42—Costs

Part 43—Interpleader proceedings

Part 46—Accounts and inquiries

(3) The UCPR, rule 1.7 provides that these Rules prevail over the UCPR.

1.7 Application of Rules to Industrial Committees and Contract of Carriage Tribunal

(1) The provisions of these Rules that apply to the Commission extend to—

(a) an Industrial Committee in relation to its exercise of the functions of the Commission under the Act, section 199, and

(b) the Contract of Carriage Tribunal in relation to the exercise of its functions under the Act, Chapter 6, Part 7.

(2) A reference to the Commission in a provision applied to an Industrial Committee or the Contract of Carriage Tribunal by subrule (1)—

(a) if the reference applies to an Industrial Committee—is to be read as a reference to an Industrial Committee, or

(b) if the reference applies to the Contract of Carriage Tribunal—is to be read as a reference to the Contract of Carriage Tribunal.

Note—

Certain provisions of the UCPR also apply to the Commission, but not to the Contract of Carriage Tribunal.

Part 2 Administration

2.1 Registry

- (1) The offices of the Registry are to be at the locations directed by the Registrar.
- (2) The offices of the Registry must be open for business from 9am to 4pm on all business days.
- (3) The offices of the Registry may be open at other times by the direction of the Registrar or the Chief Commissioner.

Note—

Fees for opening or keeping open the Registry or part of the Registry may be charged in accordance with the regulations under the Act.

- (4) In this rule—

business day means a day that is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday or bank holiday throughout the State.

2.2 Exercise of Commission's functions by Registrar and Registry officers

The Chief Commissioner may, by written instrument—

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

Note—

Similar instruments may be made under the [Civil Procedure Act 2005](#), section 13 in relation to the functions of the Commission under that Act and the UCPR.

2.3 Seals and stamps

- (1) The Registrar must keep the seal of the Commission.
- (2) The seal may be affixed by rubber stamp or electronically.
- (3) A stamp of the Registrar may be used by—
 - (a) the Registrar, or
 - (b) a Registry officer authorised by the Registrar to use the stamp.

2.4 Use of approved forms

- (1) The Chief Commissioner may approve forms from time to time to be used in connection with proceedings in the Commission.
- (2) The approved forms must be made available on the Commission website.
- (3) A document filed with or issued by the Commission for which there is an approved form must be in the approved form.

2.5 Filing of documents in proceedings

- (1) Documents in proceedings before the Commission must be filed in person unless—
 - (a) the Commission directs that a document or class of document may be filed using the Commission website, or
 - (b) otherwise provided for by these Rules.
- (2) Unless the Commission directs differently, the documents filed must include the number of copies specified in the following table—

Type of proceedings	Number of copies
General application	Original plus 1 copy, unless otherwise required in the approved form
Application for award, contract determination, enterprise agreement or contract agreement	Original plus 1 copy
Application for relief from unfair dismissal	Original plus 1 copy
Dispute notification	Original plus 1 copy
Applications under the Work Health and Safety Act 2011	Original plus 1 copy
Appeals	Original plus 3 copies
Matters before a Full Bench	Original plus 3 copies, or, if the Full Bench consists of more than 3 members, the same number of copies as members of the Full Bench
Contract of Carriage Tribunal	Original plus 3 copies

Note—

Parties will also need a copy for themselves 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.

2.6 Requirements for leave for access

- (1) A person may not be given access to a document or other thing held by the Commission unless the Commission gives leave for the access.
- (2) The following persons do not require the leave of the Commission to be given access to a document or other thing—
 - (a) a party to the proceedings to which the document or thing relates,
 - (b) a person seeking to search a register kept under the Act, section 45, 331 or 342,
 - (c) a person seeking to search copies of part-time work agreements kept by the Registrar under the Act, section 78,
 - (d) a person seeking to search an application to make or vary an award or contract determination,
 - (e) a person seeking to search another register kept by the Registrar.
- (3) Leave is required to give a person who is not a party to the proceedings access to a document or other thing relating to the following—
 - (a) proceedings on an unfair dismissal application,
 - (b) proceedings conducted in the absence of the public,
 - (c) information concerning a trade secret for which a direction has been given by the Commission under the Act, section 395,
 - (d) a matter about which the Commission has given a direction for confidentiality to be observed,
 - (e) proceedings, or a part of proceedings, about which the Commission has given a direction for the proceedings or part of proceedings not to be opened for inspection,
 - (f) a document or other thing about which a direction has been given by the Commission for the document or thing not to be opened for inspection,
 - (g) proceedings for contempt.

2.7 Applications for leave to be given access

- (1) An application for leave to be given access to a document or other thing must—
 - (a) be written, and
 - (b) state why access is sought, and

- (c) state why leave should be given.
- (2) The application must demonstrate that access should be given to the particular document or thing.
- (3) The application may be dealt with in the absence of the public and without the appearance of any person.
- (4) Interested parties may be notified of, and may be heard in relation to, the application.

Note—

Fees for the provision of a copy of a 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 for proceedings

- (1) The originating process for proceedings in the Commission must be in the approved form for the proceedings unless the Commission orders differently.
- (2) The originating process must—
 - (a) state that the proceedings may be heard by the Commission, and
 - (b) state that the respondent is liable to have a decision or an order made against the respondent, unless the respondent or the respondent’s representative attends before the Commission at the time and place stated in the originating process, and
 - (c) state that the respondent must, before the attendance, file a notice of appearance, and
 - (d) give the address of the Registry as the place for attendance.
- (3) The Commission, on the application of a respondent by notice of motion, may by order—
 - (a) set aside the originating process, or
 - (b) determine the Commission has no jurisdiction over the respondent in relation to the subject matter of the proceedings, or
 - (c) decline in its discretion to exercise its jurisdiction in the proceedings, or
 - (d) grant other relief the Commission considers appropriate.
- (4) If a respondent files a notice of motion without entering a notice of appearance, the notice must—
 - (a) include the words “The respondent’s address for service is” and state the address,

and

(b) be filed within the required time for entering an appearance.

(5) An application made under subrule (3) does not constitute a voluntary submission to jurisdiction.

3.2 Matters initiated by Commission

(1) If the Commission decides to act on its own initiative in relation to a matter not otherwise in proceedings before it, the Commission may direct the proceedings be commenced by a summons to show cause issued by the Registrar.

(2) The summons must be served on the persons, and in the way, the Commission directs.

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) a notice of motion, and

(b) an affidavit that sets out, briefly but specifically, the reasons the proceedings should be dealt with urgently.

(2) Copies of the notice of motion and affidavit must be served on the other parties—

(a) with the originating process, or

(b) if the proceedings have commenced before the notice of motion and affidavit are filed—promptly after they are filed.

(3) This rule does not apply to a dispute or other matter to which rule 5.2 or 5.4 applies.

Part 4 Conduct of proceedings

Division 1 Appearances

4.1 Entering an appearance

(1) A person must not, except by leave of the Commission, take any step in proceedings unless the person has—

(a) filed an originating process, or

(b) entered an appearance.

(2) A respondent may enter an appearance in proceedings—

(a) by filing a notice of appearance, or

(b) by leave of the Commission, orally during the proceedings.

- (3) If an appearance is entered orally during the proceedings, written confirmation must be promptly filed and served.
- (4) A respondent who files a reply in proceedings is taken to have entered an appearance in the proceedings.

4.2 Notice of appearance

- (1) A notice of appearance must include the following—
- (a) the name, address, telephone number and email address of the person entering the appearance,
 - (b) if the person entering the appearance appears by a representative—the name, address, telephone number and email address of the representative,
 - (c) if the person entering the appearance appears by a solicitor and the solicitor has another solicitor as agent in the proceedings—the name, address, telephone number and email address of the agent,
 - (d) an address for service.
- (2) If an address 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.
- (3) The respondent must serve the notice of appearance on the applicant and on each other party with an address for service on the day the appearance is entered or on the following day.

4.3 Respondent submitting to decision

- (1) A respondent who intends to take no active part in proceedings may include in the respondent's notice of appearance—
- (a) a statement to the effect the respondent submits to the making of all orders sought for all claims made, and
 - (b) the words “, save as to costs” following the statement.
- (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 documents or take other steps in the proceedings.

4.4 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—
 - (a) the date appointed for a hearing or mention, and
 - (b) filing any document.
- (3) For proceedings commenced by a dispute notification under Part 5, an appearance must be entered on or before the date on which the matter is listed.
- (4) For proceedings commenced by summons, an appearance must be entered by the later of the following—
 - (a) on or before the return date specified in the summons,
 - (b) if the respondent makes an unsuccessful application to have the summons set aside—no later than 7 days after the refusal of the application.

Division 2 Other provisions

4.5 Notice in reply to application

- (1) A respondent to an application may, but is not required to, file a document in reply.
- (2) Despite subrule (1), a respondent in proceedings under the Act, Chapter 2, Part 6 or 7 must file and serve a notice in reply—
 - (a) at least 48 hours before the commencement of conciliation proceedings, or
 - (b) as otherwise directed by the Commission.

4.6 Points of contention

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

4.7 Costs generally

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

- (3) Unless the Commission orders differently, the costs of an application or another step in proceedings, including reserved costs, must be paid and otherwise dealt with in the same way as the general costs of the proceedings.
- (4) Unless the Commission orders differently, the costs referred to in subrule (3) do not become payable until the conclusion of the proceedings.

Part 5 Dispute resolution

Division 1 Dispute notifications under the Act, s 130 or 332

5.1 Application of Division

This Division applies to the notification of an industrial dispute under the Act, section 130 or 332.

5.2 Notification of dispute

- (1) The notification must include the following—
 - (a) the names of the parties affected by or involved in the dispute,
 - (b) the applicable industrial instrument, if any,
 - (c) relevant particulars of the dispute,
 - (d) the relief sought by the party giving the notification,
 - (e) for an urgent dispute—the reasons why the dispute should be dealt with urgently.
- (2) The notification must be given to the Registrar by—
 - (a) delivering the notification to a Registry officer, or
 - (b) sending the notification by post to the Registry, or
 - (c) sending the notification to the Registry's email address.
- (3) Despite subrule (2), notification of an urgent dispute may be given to the Registrar orally, including by telephone.
- (4) The person giving a notification orally must give the Registrar written confirmation of the notification as soon as possible.
- (5) A copy of the notification, or the written confirmation, must be served promptly on the other parties affected by or involved in the dispute.

5.3 Reinstatement claims related to notification

- (1) If the notification indicates that an order for reinstatement or similar relief will be

claimed, particulars of the claim must be served on the parties affected by or involved in the dispute promptly after the dispute is notified.

- (2) Subrule (1) does not apply if the particulars are included in another application made under the Act.

Division 2 Other disputes

5.4 Disputes under [Entertainment Industry Act 2013](#)

- (1) This rule applies to an application to the Commission to determine a question, dispute or difficulty under the [Entertainment Industry Act 2013](#), section 20.
- (2) The application must include the following—
- (a) the names of the parties affected by or involved in the question, dispute or difficulty,
 - (b) the applicable industrial instrument, if any,
 - (c) relevant particulars of the question, dispute or difficulty,
 - (d) the relief sought by the party making the application,
 - (e) for an urgent question, dispute or difficulty—the reasons why the question, dispute or difficulty should be dealt with urgently.
- (3) The application must be given to the Registrar by—
- (a) delivering the notification to a Registry officer, or
 - (b) sending the notification by post to the Registry, or
 - (c) sending the notification to the Registry’s email address.
- (4) Despite subrule (3), an urgent application may be made to the Registrar orally, including by telephone.
- (5) The person making an application orally must give the Registrar written confirmation of the application as soon as possible.
- (6) A copy of the application, or the written confirmation, must be served promptly on the other parties affected by or involved in the question, dispute or difficulty.

5.5 Federal enterprise agreement disputes

- (1) An application for a dispute to be resolved by the Commission under the Act, section 146B must—
- (a) specify the federal enterprise agreement to which it relates, and

(b) include a copy of the federal enterprise agreement.

- (2) The parties may agree that the Commission's established standard procedures, whether by practice notes or otherwise, for the exercise of the Commission's functions in proceedings apply to proceedings under this rule.

Division 3 Summonses

5.6 Summonses

- (1) If a member of the Commission is sitting as the Contract of Carriage Tribunal, the summons may be issued by the member of the Commission sitting as the Tribunal.
- (2) If the Commission is sitting as an Industrial Committee, the summons may be issued by the Chairperson of the Committee.
- (3) The summons may be given orally or in writing to the persons to whom the summons relates or to their representatives.
- (4) A summons for production or to give evidence may be issued by the Registrar in proceedings under the Act, section 164 at the request or direction of the Commission.

Note—

The UCPR, Part 33 applies to certain summonses under the Act, section 165—see the UCPR, rule 33.1, definition of *subpoena*.

Part 6 Awards, contract determinations, enterprise agreements and contract agreements

Division 1 Awards and contract determinations

6.1 Definitions

In this Division—

application, for an award, includes an application to vary or rescind an award.

award includes a contract determination.

6.2 Preparation of draft awards

- (1) The Commission may, if the Commission intends to make an award—
- (a) direct the Registrar to prepare, within a specified period, a draft of the proposed award, or
- (b) direct 1 or more of the parties to the proceedings to prepare and submit to the Registrar, within a specified period, a draft of the proposed award.

- (2) A draft of a proposed award must be prepared in electronic form.

6.3 Filing of electronic versions of awards

- (1) A party to proceedings in which an award is made, varied or rescinded must, if directed by the Commission, file an electronic copy of the award, award variation or notice of rescission within 7 days after the award is made, varied or rescinded.
- (2) The Commission's papers concerning proceedings must be forwarded to the Registrar within 7 days after an award is made, varied or rescinded in the proceedings.
- (3) It is sufficient compliance with subrule (2) for proceedings that are not finally determined if the Registrar is provided with extracts from the papers sufficient to enable the award to be settled and published on the Commission website.

6.4 Settlement of awards

The Registrar must settle a draft of an award or award variation within 28 days after the Commission makes or varies the award.

6.5 Standard award clauses

- (1) The Full Bench of the Commission, or the Commission constituted by a member nominated by the Chief Commissioner, may direct the use of standard clauses in awards.
- (2) The Registrar must publish the directions on the Commission website.
- (3) The Commission may depart from a standard clause for any reason the Commission considers appropriate.

6.6 Reprints

The Registrar may publish on the Commission website a reprint of an award incorporating all award variations up to a specified date.

6.7 Records of persons affected by awards

- (1) The Registrar must keep a record (a **party card**) in relation to each award.
- (2) A party card must include the following particulars—
 - (a) the parties to the award,
 - (b) the State peak councils in relation to the award.
- (3) The Registrar may, on application in the approved form by a registered industrial organisation or other person who is not a party to an award, include the organisation or person on the party card if the Registrar is satisfied that the organisation or person has a sufficient interest in applications relating to the award to justify being served

with process relating to the award.

- (4) The persons or bodies recorded on a party card must be served with applications relating to the award.
- (5) The Registrar must, at least once every 3 years, give notice to each person or body recorded on a party card, and to the Commission, that the award to which the party card relates is due to be reviewed under the Act, section 19.
- (6) A person or body recorded on a party card does not have standing in proceedings merely because the person or body is recorded on the party card.
- (7) A person or body may be removed from a party card by the Registrar, on application by a party to the award or on the Commission's own initiative, if the person or body has been given at least 1 month's written notice sent to the person or body's last known address of the proposal to remove the person or body.

6.8 Applications for consent awards

- (1) 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 the Act, section 23.
- (2) The following must be filed with the application for the consent award—
 - (a) the supporting affidavit,
 - (b) an electronic copy of the proposed award.
- (3) In this rule—

consent award means an award made by mutual consent of all parties to the proposed award, and includes a variation of an award made by mutual consent of all parties to the original award.

Division 2 Enterprise agreements and contract agreements

6.9 Comparison and compliance statement

- (1) An application for approval of an enterprise agreement or contract agreement must be accompanied by an affidavit.
- (2) The affidavit must—
 - (a) identify—
 - (i) the awards or contract determinations, if any, over which the agreement will prevail, and

- (ii) other enterprise agreements or contract agreements that will be rescinded or replaced if the agreement is approved, and
 - (b) compare the conditions of employment or engagement under the agreement with the comparative conditions of employment.
- (3) The affidavit must also set out, briefly but specifically, the basis on which the following is contended—
- (a) the conditions of employment or engagement under the agreement, if compared with the comparative conditions of employment, do not, considered as a whole, result in a net detriment to the employees covered by the agreement,
 - (b) the agreement complies with relevant statutory requirements, including in the *Anti-Discrimination Act 1977*,
 - (c) the parties understand the effect of the agreement,
 - (d) the parties did not enter into the agreement under duress,
 - (e) the agreement complies with the principles set by the Commission under the Act, section 33 or any departure from the principles does not prejudice the interests of the parties to the agreement.
- (4) If the agreement does not cover all of the employees of the employers to whom the agreement relates, the affidavit must also state the basis on which it is contended the Commission is not prevented from approving the agreement under the Act, section 35(2) or 325(2).
- (5) In this rule—

comparative conditions of employment means the conditions of employment or engagement that would otherwise apply under—

- (a) the relevant award or contract determination, or
- (b) if there is no relevant award or contract determination—the relevant employment conditions.

employee, in relation to a contract agreement, means a carrier or driver.

employer, in relation to a contract agreement, means a contractor.

Part 7 Appeals

7.1 Notice to appeal

- (1) An application for leave to appeal and appeal must be made within—
 - (a) 21 days after the date of the decision to be appealed, or

(b) a further period allowed by the Commission.

(2) An application to extend the time to appeal may be—

(a) included in the application for leave to appeal and appeal, or

(b) made by separate notice of motion.

7.2 Application for stay of proceedings

(1) If a stay of the whole or part of a decision is sought pending the determination of an appeal, the appeal must include an application for the stay.

(2) Except to the extent the Commission or, subject to a direction of the Commission, the decision maker below may direct, an appeal does not—

(a) operate as a stay of proceedings, or

(b) invalidate any intermediate act or proceedings.

7.3 Leave to introduce fresh evidence

(1) An application for leave to introduce fresh evidence on appeal may be made—

(a) in the application for leave to appeal and appeal, or

(b) by leave of the Commission—by notice of motion.

(2) The application must be supported by an affidavit setting out the following—

(a) the nature of the fresh evidence,

(b) the reason the fresh evidence was not brought at first instance,

(c) the reasons the fresh evidence is necessary in the appeal.

7.4 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 a respondent to the appeal.

(2) The Commission may order the addition or removal of any person as a party to an appeal.

7.5 Notice of contention

(1) This rule applies if a respondent—

(a) seeks to contend 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 the decision.
- (2) The respondent is not required to file a cross-appeal, but may instead file a notice of contention stating, briefly but specifically, the grounds relied on in support of the contention.
- (3) The notice must be filed and served within—
 - (a) 14 days after service on the respondent of the application commencing the appeal, or
 - (b) a further period allowed by the Commission.

7.6 Interlocutory decisions

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

7.7 Appeal book

Unless the Commission directs differently, the appellant must, within 28 days after the filing of an appeal—

- (a) file an appeal book consisting of—
 - (i) the application and all documents subsequently filed in the proceedings, and
 - (ii) the transcript of the proceedings, including exhibits, before the decision maker below, and
 - (iii) the decision appealed against, and
- (b) serve a copy of the appeal book on each respondent.

7.8 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) Leave may be sought by filing a notice of motion with a supporting affidavit.

Part 8 Small claims applications

8.1 Definition

In this Part—

small claims application has the same meaning as in the Act, section 379.

8.2 Reallocation of complex, difficult or important proceedings

- (1) A small claims application must not be determined as a small claims application if, at any time before a decision is made, the Commission considers the matters in dispute are so complex or difficult, or are of an importance, that the proceedings should not be determined as a small claims application.
- (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 Commission ceases to consider the proceedings should not be determined as a small claims application.

8.3 Conduct of conciliation for small claims applications

- (1) Conciliation of a small claims application must be attempted by a conciliation conference conducted after reasonable notice is given to the parties.
- (2) Each party may be represented, but only by a person who is fully aware of the matter and has full authority in relation to the settlement of the matter.
- (3) The Commission may refuse to list proceedings for hearing if the Commission is satisfied the parties have not made reasonable attempts to settle the matters in dispute.
- (4) If a party fails to attend a conciliation conference after being given notice under subrule (1), the Commission may—
 - (a) adjourn the conference to new date, and
 - (b) direct a further notice be given, no later than 5 days before the new date, to the party who failed to attend.
- (5) The notice under subrule (4) must state whichever of the following is appropriate—
 - (a) the Commission may make an order dismissing the applicant's claim, in whole or in part, if the applicant, as the party in default, fails to attend the adjourned conciliation, or
 - (b) the Commission may uphold the applicant's claim and make an order against the respondent if the respondent, as the party in default, fails to attend the adjourned conciliation.
- (6) If a party fails to attend the adjourned conciliation after being given notice under subrule (4), the Commission may make—
 - (a) the relevant order specified in subrule (5), and
 - (b) other orders the Commission considers appropriate in the circumstances.

8.4 Small claims proceedings

- (1) The procedure to be followed at a hearing of proceedings to deal with a small claims application must be determined by the Commission.
- (2) Unless the Commission orders differently, proceedings are to be heard and determined on the basis of written statements filed and served on the parties.
- (3) Proceedings may be heard and determined by the Commission even if 1 or more of the parties is absent.
- (4) Unless the Commission orders otherwise, the following applications must be made by notice of motion—
 - (a) an application for the proceedings not to be dealt with as a small claims application,
 - (b) an application in relation to proceedings made after the Commission has made a decision in the proceedings.

Part 9 Miscellaneous

9.1 Stated case

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

9.2 Proceedings before the Contract of Carriage Tribunal

- (1) A person may lodge a document for filing in relation to proceedings before the Contract of Carriage Tribunal by—
 - (a) delivering the document to a Registry officer, or
 - (b) sending the document by post to the Registry.
- (2) A document is taken to have been filed when the document is lodged for filing unless acceptance of the document is subsequently refused by the Tribunal.
- (3) A Registry officer may refuse to accept a document for filing in the following circumstances—
 - (a) for 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) for 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

payment.

- (4) If a claim for compensation made to the Contract of Carriage Tribunal is accepted for filing, a case number or other unique identifier must be assigned to the proceedings commenced by the claim.
- (5) A Registry officer must endorse on the claim for compensation the case number or other unique identifier assigned to the proceedings commenced by the claim.

9.3 Special provision for service of documents following reference

- (1) This rule applies to a reference under the Act, section 146(1)(d), 156(5)(a), 193(1), 195(1) or (4) or Schedule 3, clause 9(6).
- (2) Copies of the reference and the appointment for hearing of the reference must be served on the persons, and in the way, the Registrar directs.
- (3) If the reference arises from proceedings before the Commission, the Registrar may direct a copy of the transcript of the proceedings, including exhibits, be served in a similar way.

9.4 Correction of decisions published on Commission website

- (1) This rule applies to an order, award or contract determination (a **decision**) published on the Commission website.
- (2) The Registrar may correct a decision published on the Commission website if the correction is necessary because of a clerical or typographical error.
- (3) The Commission may, on application by a party or on its own initiative, correct—
 - (a) a mistake or error in a decision resulting from an accidental slip or omission, or
 - (b) a decision for the purpose of carrying out its intention or to express its meaning more accurately.
- (4) The power under this rule is additional to the power under the UCPR relating to amendment.

9.5 Industrial Committees

- (1) The Registrar must keep records of the following in relation to each Industrial Committee—
 - (a) the members, alternate members and deputy members of the Committee,
 - (b) each person entitled to nominate a member of the Committee,
 - (c) other persons who the Registrar is satisfied have a sufficient interest in matters dealt with by the Committee to justify service with process affecting the

establishment, constitution or dissolution of the Committee.

- (2) A sitting of an Industrial Committee may be convened by the Chairperson of the Committee—
 - (a) by the Registrar serving a notice in the approved form on the members of the Committee, or
 - (b) in another way directed by the Chairperson of the Committee.
- (3) An application to the Commission to dissolve the term of an Industrial Committee must be served on—
 - (a) the persons on the records kept under subrule (1)(b) and (c), and
 - (b) other persons as the Registrar directs.
- (4) The Registrar must, not less than 3 months before the date on which an Industrial Committee is to be dissolved under the Act, section 200(1), notify the date on which the Committee will be dissolved to parties entitled to nominate a member of the Committee.
- (5) The Registrar, if satisfied an Industrial Committee has ceased to function or become obsolete, may submit a report to the Commission.
- (6) The Commission may, after considering the report and hearing any interested parties, dissolve the Industrial Committee.
- (7) The Commission may dissolve the Industrial Committee in chambers if the Commission considers there are no interested parties.

9.6 Repeal and savings

- (1) The *Industrial Relations Commission Rules 2009* are repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Industrial Relations Commission Rules 2009*, had effect under those Rules continues to have effect under these Rules.