

# Industrial Relations Commission Rules 2022

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New South Wales

## Status Information

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### Authorisation

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# Industrial Relations Commission Rules 2022



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	7
1.1 Name of Rules .....	7
1.2 Commencement .....	7
1.3 Definitions .....	7
1.4 Commission may dispense with Rules or give other directions about practice and procedure.....	8
1.5 Application of Civil Procedure Act 2005 .....	8
1.6 Application of UCPR .....	8
1.7 Application of Rules to Industrial Committees and Contract of Carriage Tribunal.....	9
1.7A Application of Rules to WHS prosecutions .....	9
<b>Part 2 Administration</b> .....	9
2.1 Registry .....	9
2.2 Exercise of Commission's functions by Registrar and Registry officers .....	10
2.3 Seals and stamps .....	10
2.4 Use of approved forms .....	10
2.5 Filing of documents in proceedings .....	11
2.6 Requirements for leave for access .....	11
2.7 Applications for leave to be given access.....	12
<b>Part 3 Commencement of proceedings</b> .....	13
Note.....	13
3.1 Originating process for proceedings .....	13
3.2 Matters initiated by the Commission .....	13
3.3 Applications for proceedings to be dealt with urgently .....	14

<b>Part 4 Conduct of proceedings</b> .....	14
Note.....	14
<b>Division 1 Appearances</b> .....	14
4.1 Entering an appearance .....	14
4.2 Notice of appearance .....	15
4.3 Respondent submitting to decision .....	15
4.4 Time for appearance .....	15
<b>Division 2 Other provisions</b> .....	16
4.5 Notice in reply to application.....	16
4.6 Points of contention.....	16
4.6A Evidence by telephone, video link or other communication.....	16
4.7 Costs generally.....	17
4.8 Interpreter for criminal proceedings.....	17
<b>Part 5 Dispute resolution</b> .....	17
<b>Division 1A Mutual gains bargaining</b> .....	17
5.1A Notice of intention to commence bargaining .....	18
5.1B Consultation with Commission before declaring bargaining unresolved .....	18
5.1C Notice for declaring bargaining unresolved.....	18
<b>Division 1 Dispute notifications under the Act, s 130 or 332</b> .....	18
5.1 Application of division .....	18
5.2 Notification of dispute .....	18
5.3 Reinstatement claims related to notification .....	19
<b>Division 2 Other disputes</b> .....	19
5.4 Disputes under Entertainment Industry Act 2013 .....	19
5.5 Federal enterprise agreement disputes.....	20
<b>Division 3 Summonses</b> .....	20
5.6 Summonses.....	20

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

.....	21
<b>Division 1 Awards and contract determinations</b> .....	21
6.1 Definitions .....	21
6.2 Preparation of draft awards .....	21
6.3 Filing of electronic versions of awards .....	21
6.4 Settlement of awards .....	22
6.5 Standard award clauses .....	22
6.6 Reprints .....	22
6.7 Records of persons affected by awards .....	22
6.8 Applications for consent awards.....	23
<b>Division 2 Enterprise agreements and contract agreements</b> .....	23
6.9 Comparison and compliance statement .....	23
<b>Part 7 Appeals</b> .....	24
<b>Division 1 General</b> .....	24
7.1 Notice to appeal .....	24
7.2 Application for stay of proceedings .....	25
7.3 Leave to introduce fresh evidence.....	25
7.4 Respondents.....	25
7.4A Notice of cross-appeal .....	25
7.5 Notice of contention .....	26
7.6 Interlocutory decisions .....	26
7.7 Appeal book.....	26
7.8 Issue of summons in appeal proceedings.....	26
7.9 Security for costs.....	27
7.10 Stated cases.....	27
<b>Division 2 Appeals from Local Court</b> .....	27
7.11 Application of division .....	27
7.12 Notice to Local Court .....	27

7.13 Local Court registrar to inform Industrial Court .....	27
7.14 Industrial Court to inform Local Court of result.....	28
<b>Part 7A Proceedings for recovery of money and civil penalties.....</b>	<b>28</b>
7A.1 Application of part .....	28
7A.2 Commencement of proceedings.....	28
7A.3 Conduct of proceedings.....	28
7A.4 Small claims during other Commission hearings.....	29
<b>Part 7B Proceedings for contravention of dispute orders and offences under the Act</b>	
.....	29
7B.1 Application of part .....	29
7B.2 Commencement of proceedings.....	29
7B.3 Issue of summons .....	29
7B.4 Service of summons and affidavit verifying .....	30
<b>Part 7C Proceedings for work health and safety prosecutions.....</b>	<b>30</b>
7C.1 Application of part .....	30
7C.2 Commencement and conduct of proceedings generally .....	30
7C.2A Notice under the Evidence Act 1995, ss 67 and 99.....	30
7C.3 Order for defendant’s appearance .....	30
<b>Part 7D Proceedings for unfair contracts .....</b>	<b>31</b>
7D.1 Definition .....	31
7D.2 Application of part.....	31
7D.3 Commencement of proceedings .....	31
7D.4 Allocation generally.....	32
7D.5 Conduct of conciliation conferences .....	32
7D.6 Certificate of result of conciliation .....	32
7D.7 Allocation of matter after certificate issued .....	33
7D.8 Conduct of post-conciliation proceedings .....	33
<b>Part 8 Small claims applications .....</b>	<b>33</b>
8.1 Definitions .....	33
8.2 Reallocation of complex, difficult or important proceedings.....	33

8.3 Conduct of conciliation for small claims applications .....	34
8.4 Small claims proceedings .....	34
8.5 Fair Work Act matters dealt with as small claims applications .....	35
<b>Part 8A Contempt of the Commission .....</b>	<b>35</b>
Note.....	35
<b>Division 1 Contempt in the face or hearing of the Commission .....</b>	<b>35</b>
8A.1 Arrest.....	35
8A.2 Charge, defence and determination .....	35
8A.3 Interim custody .....	36
<b>Division 2 Motion or proceedings for punishment.....</b>	<b>36</b>
8A.4 Application of division .....	36
8A.5 Commencement of proceedings by persons other than the Court .....	36
8A.6 Motion or proceedings commencing by registrar on behalf of Court.....	36
8A.7 Statement of charge.....	37
8A.8 Evidence.....	37
8A.9 Service .....	37
8A.10 Arrest.....	37
<b>Part 9 Miscellaneous .....</b>	<b>38</b>
9.1 (Repealed) .....	38
9.2 Proceedings before the Contract of Carriage Tribunal .....	38
9.3 Special provision for service of documents following reference .....	38
9.4 Correction of decisions published on Commission website.....	39
9.5 Industrial Committees .....	39
9.6 Repeal and savings.....	40
<b>Schedule 1 Application of UCPR .....</b>	<b>40</b>
<b>Schedule 2 Number of copies to file in proceedings .....</b>	<b>41</b>
<b>Schedule 3 Conduct of unfair contract proceedings .....</b>	<b>42</b>

# 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 President 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.

**conciliation certificate**—see rule 7D.1.

**contemnor** means a person guilty or alleged to be guilty of contempt of the Commission.

**Fair Work Act**, for Part 8—see rule 8.1.

**file** means to file with the Registry.

**FWA small claims application**, for Part 8—see rule 8.5(2).

**Industrial Court** means the Commission in Court session.

**online registry** means the electronic case management system available on the Commission website and established under the *Electronic Transactions Act 2000*, Schedule 1, clause 2.

**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**

Schedule 1 sets out the UCPR provisions that do not apply to—



- (a) the Commission, when it is not in Court Session, and
- (b) the Industrial Court.

**Note—**

The UCPR, rule 1.5 provides that the UCPR generally apply to proceedings in the Commission. 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.

#### **1.7A Application of Rules to WHS prosecutions**

The following do not apply to criminal proceedings under the [Work Health and Safety Act 2011](#)—

- (a) Part 3 of these rules,
- (b) Part 4 of these rules, except rules 4.6A and 4.8.

**Note—**

See Part 7C for rules about proceedings for work health and safety prosecutions.

## **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 President.

**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 President 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 President 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.

- (4) The *Commission Form 1* or *Court Form 4—Application, General Form* must be used for the filing of a document if—
- (a) these rules do not otherwise require an approved form for the filing of the document, or
  - (b) an approved form is required but there is no approved form.

## **2.5 Filing of documents in proceedings**

- (1) A document in proceedings before the Commission may be filed as follows—
- (a) in person,
  - (b) by post,
  - (c) by using the Commission’s online registry,
  - (d) by email if the document cannot be filed in accordance with paragraph (c),
  - (e) another way with leave of the Commission.
- (2) A document filed in person, or by post, must include the number of copies specified in Schedule 2, unless the Commission directs differently.
- (3) The Commission may refuse to accept a document for filing—
- (a) if the document is not filed in accordance with—
    - (i) the approved form, or
    - (ii) these rules, or
    - (iii) a relevant practice note, or
  - (b) if a fee required for the filing of the document has not been paid.

## **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**

### **Note—**

This part provides rules for the commencement of proceedings generally. Parts 7A–7D provide for rules specific to the commencement of certain types of proceedings and prevail to the extent of an inconsistency with this part.

### **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 the Commission**

- (1) The Commission may do the following if the Commission decides to act on its own

initiative in relation to a matter not otherwise in proceedings before it—

(a) direct parties by summons to attend and confer,

(b) direct proceedings to be commenced by—

(i) a summons to show cause, or

(ii) written notice issued by the Registrar.

(2) The summons to attend and confer may be given by the Registrar to the persons—

(a) by written notice, or

(b) if necessary, by notification by telephone.

### **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**

### **Note—**

This part provides rules generally for the conduct of proceedings. Parts 7A-7D provide for rules specific to the conduct of certain types of proceedings and prevail to the extent of an inconsistency with this part.

## **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.

#### **4.6A Evidence by telephone, video link or other communication**

If the Commission orders, evidence and submissions may be received by—

- (a) telephone, or



- (b) video link, or
- (c) another form of communication.

#### **4.7 Costs generally**

(1A) This rule applies to costs in civil proceedings before the Commission, when it is not in Court Session.

**Note—**

Costs in civil proceedings before the Industrial Court are dealt with in the UCPR, Part 42.

- (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.

#### **4.8 Interpreter for criminal proceedings**

- (1) This rule applies to an interpreter whose services are provided by arrangement with the Registrar for the assistance of the Industrial Court in the translation of evidence given in criminal proceedings.
- (2) This rule does not apply to an interpreter who is engaged to assist a party.
- (3) The interpreter must, when attending at the Court, report to—
  - (a) the Sheriff's Officer in charge at the Court, or
  - (b) the Associate to the presiding judicial member.
- (4) The interpreter must not, without the direction or permission of the presiding judicial member, make the interpreter's services available to, or communicate with—
  - (a) a party to the proceedings, or
  - (b) a representative of the party.

## **Part 5 Dispute resolution**

### **Division 1A Mutual gains bargaining**

### **5.1A Notice of intention to commence bargaining**

For the Act, section 129N(1), the written notice must be—

- (a) in the approved form, and
- (b) given to the Registrar in person, by post or by electronic communication.

### **5.1B Consultation with Commission before declaring bargaining unresolved**

For the Act, section 129P(2), a person must consult with the Commission by—

- (a) preparing and giving to the Commission a draft of the written notice and report referred to in the Act, section 129P(3), and
- (b) then discussing the matter with the President or the President's delegate.

### **5.1C Notice for declaring bargaining unresolved**

For the Act, section 129P(3), the written notice must be—

- (a) in the approved form, and
- (b) given to the Registrar in person, by post or by electronic communication.

## **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.
- (5) A summons for production or evidence must be signed by a member of the Commission or the Registrar, unless the issuing officer of the summons authenticates a sufficient number of copies of the summons for service and proof of service by—
  - (a) sealing with the seal of the Commission, or
  - (b) authenticating in another way.
- (6) A summons for production or to give evidence is taken to have been issued on the summons being sealed or authenticated in accordance with subrule (5).
- (7) A party to proceedings may apply to the Commission, when it is not in Court Session,

for an order permitting the party to issue notices to produce documents before or during a hearing in accordance with one or both of the following—

- (a) the UCPR, Part 21, Division 2,
- (b) the UCPR, Part 34.

**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 President, 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—
  - (a) the way in which the consent award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value, and
  - (b) the reasons why the making of the consent award is in the public interest having regard to the matters set out in the Act, section 146(2).
- (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

### Division 1 General

#### 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.

### **7.4A Notice of cross-appeal**

An application for leave to cross-appeal and cross-appeal 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.

#### **Note—**

A respondent to an appeal who is entitled to cross-appeal should file a notice of cross-appeal only if the respondent wishes to vary the decision below. If the respondent wishes to have the decision below affirmed on grounds other than those relied on by the court below, the respondent should file and serve a notice of contention as provided by rule 7.5 rather than a notice of cross-appeal. If the respondent objects to the

competency of the appeal, the respondent should file and serve a notice of objection to the competency of the appeal as provided by the UCPR, rule 51.41.

### **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.

### **7.9 Security for costs**

- (1) No security for costs of an appeal to the Industrial Court is required, unless, in special circumstances, the Court orders that security be given.
- (2) This rule does not affect the powers of the Industrial Court under the UCPR, Part 42.

### **7.10 Stated cases**

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

## **Division 2 Appeals from Local Court**

### **7.11 Application of division**

This division applies to proceedings in the Industrial Court on appeal from the Local Court.

### **7.12 Notice to Local Court**

The appellant, on filing a notice to the Industrial Court for leave to appeal, must give notice of the appeal in the approved form to a registrar of the Local Court located where the proceedings on appeal were heard.

### **7.13 Local Court registrar to inform Industrial Court**

A registrar of the Local Court must, as soon as practicable after receiving a notice from an appellant in accordance with rule 7.12—

- (a) give the Registrar the following information from the proceedings on appeal—
  - (i) if the appellant is an individual—
    - (A) the full name and other names recorded in the proceedings by which the appellant is known, and
    - (B) the date of birth and last known address of the appellant,
  - (ii) if the appellant is a corporation—the registered name, registered address and ACN of the appellant,
  - (iii) the offence for which the appellant was convicted,
  - (iv) if known to the registrar of the Local Court, the full name, address and telephone number of a solicitor who acted for the appellant in the proceedings,
  - (v) the full name and address of the informant, and if applicable, the title of the office of the informant,
  - (vi) the location of the transcription centre to which the tapes of the proceedings

were sent, and

- (b) request a transcript of the proceedings on appeal be prepared.

#### **7.14 Industrial Court to inform Local Court of result**

The Registrar must, as soon as practicable, notify the Magistrate of the Local Court who made the decision for the proceedings on appeal of—

- (a) the judgment in the appeal proceedings, or
- (b) a decision in the appeal proceedings that has the effect of the disposal of the proceedings.

### **Part 7A Proceedings for recovery of money and civil penalties**

#### **7A.1 Application of part**

- (1) This part applies to proceedings for—
  - (a) an order of payment of money, or
  - (b) a civil penalty, or
  - (c) both.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

#### **7A.2 Commencement of proceedings**

- (1) An application to commence proceedings must be commenced in the approved form.
- (2) The Commission may require—
  - (a) the applicant to file a statement of claim, and
  - (b) the respondent to file a reply.
- (3) If the written consent of the person for whom the money is payable is required in accordance with the Act, section 369(1)—
  - (a) the person's written consent must accompany the application, or
  - (b) if consent is not available, proof of the consent may, by leave of the Commission, be given at the hearing of the proceedings.

#### **7A.3 Conduct of proceedings**

- (1) Conciliation must be attempted before a hearing for the proceedings.
- (2) The conciliation may be conducted by a non-judicial member of the Commission.

#### **7A.4 Small claims during other Commission hearings**

An application under the Act, section 380 for proceedings to be dealt with in accordance with the small claims procedure under the Act, section 379—

- (a) must be in the approved form unless the Commission otherwise orders, and
- (b) must be served promptly on the other parties to the proceedings.

### **Part 7B Proceedings for contravention of dispute orders and offences under the Act**

#### **7B.1 Application of part**

- (1) This part applies to the following—
  - (a) proceedings for a contravention of a dispute order under the Act, section 139,
  - (b) criminal proceedings for an offence under the Act.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

#### **7B.2 Commencement of proceedings**

- (1) Proceedings must be commenced by an application for summons.
- (2) The application must state the following—
  - (a) the name and address of the person bringing the proceedings (the **applicant**),
  - (b) the capacity in which the applicant is taking the proceedings,
  - (c) the name and address of the person against whom the proceedings are brought (the **respondent**),
  - (d) the nature of the alleged contravention or offence.
- (3) The Industrial Court may require the applicant to file, in support of the application—
  - (a) an affidavit verifying the allegation made in the application, and
  - (b) a minute of the summons sought.

#### **7B.3 Issue of summons**

If the Registrar is satisfied the application for summons has been properly filed, the Registrar must issue a summons directing the respondent to appear before the Industrial Court on the day and at the place specified.

#### **7B.4 Service of summons and affidavit verifying**

- (1) The applicant must serve the summons and a copy of the affidavit verifying the service not later than 5 days before the return date of the summons unless the Industrial Court gives leave for a shorter period of service.
- (2) Service must be carried out in accordance with the UCPR, Part 10.

### **Part 7C Proceedings for work health and safety prosecutions**

#### **7C.1 Application of part**

This part applies to criminal proceedings in relation to the [Work Health and Safety Act 2011](#).

#### **7C.2 Commencement and conduct of proceedings generally**

- (1) Proceedings must be commenced by an application, in the approved form, for the issue of a summons.
- (2) The summons must be lodged with the application.
- (3) Proceedings for a prosecution under the [Work Health and Safety Act 2011](#) must be commenced and conducted in accordance with the practice notes.
- (4) Service of documents in the proceedings must be effected in the same way as service of documents in civil proceedings under the UCPR, Part 10 subject to this part.

#### **7C.2A Notice under the Evidence Act 1995, ss 67 and 99**

The UCPR, rule 31.5 applies to the proceedings.

#### **7C.3 Order for defendant's appearance**

- (1) An application for an order under the [Criminal Procedure Act 1986](#), section 246, must state the following—
  - (a) the name and address of the person bringing the proceedings (the **prosecutor**),
  - (b) the capacity in which the prosecutor is taking the proceedings,
  - (c) the name and address of the person against whom the proceedings are brought (the **defendant**),
  - (d) the statutory provision, the Act and section, under which the defendant is alleged to have committed an offence,
  - (e) the nature of the alleged offence.
- (2) The Industrial Court may require the prosecutor to file, in support of the application—

- (a) an affidavit verifying the allegations made in the application, and
- (b) a minute of the order sought.

## **Part 7D Proceedings for unfair contracts**

### **7D.1 Definition**

In this part—

***conciliation certificate*** means the conciliation certificate issued under rule 7D.6(1).

### **7D.2 Application of part**

- (1) This part applies to proceedings for an order under the Act, section 106.
- (2) If this part is inconsistent with Parts 3 and 4, this part prevails to the extent of the inconsistency.

### **7D.3 Commencement of proceedings**

- (1) An application to the Industrial Court to exercise the powers conferred on it by the Act, section 106 must be in the approved form.
- (2) The application must—
  - (a) specify succinctly the matters of fact and law that form the basis of the application, and
  - (b) contain sufficient information by way of summary to assist the Industrial Court in attempting to settle the matter by conciliation.
- (3) The application must be served on the respondent unless the Registrar orders it not to be served on the respondent.
- (4) The respondent may file and serve a reply, in the approved form—
  - (a) within 21 days after the expiry of the time limited for appearance, and
  - (b) the reply must—
    - (i) answer each of the matters raised in the application, and
    - (ii) specify succinctly the matters of fact and law on which the respondent will rely in opposition to the application, and
    - (iii) contain sufficient information by way of a summary to assist the Industrial Court in attempting to settle the matter by conciliation.
- (5) The application and the respondent's reply is not required to specify the evidence by which the facts are to be proved.

- (6) The applicant may file and serve a response, in the approved form—
  - (a) within 14 days after the respondent’s reply is filed, and
  - (b) the response must answer each of the matters specified in the reply.
- (7) An application, reply or response that is filed or served under this rule must be accompanied by an affidavit verifying the matters of fact set out in the application.
- (8) If a party is a corporation, an affidavit may be sworn by any officer or employee of the corporation who is able to verify the matters of fact relied on by the corporation.

#### **7D.4 Allocation generally**

The President may allocate conciliation and judicial hearings separately.

#### **7D.5 Conduct of conciliation conferences**

- (1) Conciliation must be attempted by way of a conciliation conference.
- (2) The conciliation conference must not occur unless parties are given reasonable notice of the conciliation conference.
- (3) The conciliation conference must be conducted by way of a structured process in which the Commission attempts to assist the parties—
  - (a) to communicate effectively with each other, and
  - (b) to reach agreement on the issues in dispute.
- (4) Schedule 3, Part 1—
  - (a) applies to the conduct of the conciliation, and
  - (b) may be varied or replaced by practice notes issued under the [Civil Procedure Act 2005](#), section 15.

#### **7D.6 Certificate of result of conciliation**

- (1) A member of the Commission conducting a conciliation conference must issue a **conciliation certificate** that indicates either of the following if it has occurred during the conference—
  - (a) the matters in dispute are settled,
  - (b) the member has formed the opinion that all reasonable attempts to settle the matter by conciliation have been made without success.
- (2) The member of the Commission must not proceed further unless the matter has also been allocated to that member for orders, directions or determination.



### **7D.7 Allocation of matter after certificate issued**

- (1) A matter must be allocated to a judicial member for orders to be made if—
  - (a) a conciliation certificate for the matter has been issued in relation to rule 7D.6(1)(a) and the settlement requires orders to be made, and
  - (b) the conference has not been conducted by a judicial member.
- (2) A matter must be allocated to a judicial member for determination if a conciliation certificate for the matter is issued in relation to rule 7D.6(1)(b).

### **7D.8 Conduct of post-conciliation proceedings**

- (1) Schedule 3, Part 2 applies to a matter to which a conciliation certificate under rule 7D.6(1)(b) has been issued.
- (2) Schedule 3, Part 2—
  - (a) applies unless the Commissions directs otherwise, and
  - (b) may be varied or replaced by practice notes issued under the [Civil Procedure Act 2005](#), section 15.

## **Part 8 Small claims applications**

### **8.1 Definitions**

In this part—

**Fair Work Act** means the [Fair Work Act 2009](#) of the Commonwealth.

**FWA small claims application**—see rule 8.5(2).

**small claims application** means—

- (a) a small claims application within the meaning of the Act, section 379, or
- (b) a FWA small claims application.

### **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**

- (1A) This rule applies only to small claims applications within the meaning of the Act, section 379.
- (1) Conciliation of a small claims application must be attempted by a conciliation conference conducted after reasonable notice is given to the parties.
- (2) Subject to the Act, section 166(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 procedures to be followed at a hearing in proceedings for a small claims application must be in accordance with a determination, if any, of 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.

### **8.5 Fair Work Act matters dealt with as small claims applications**

- (1) A person who makes an application to the Industrial Court for an order under the Fair Work Act, section 545(3) may request that the application be dealt with in accordance with this part and the relevant practice note if the amount sought under the order is less than \$100,000.
- (2) If the Commission grants the request, the application is a ***FWA small claims application***.

## **Part 8A Contempt of the Commission**

### **Note—**

Contempt of the Commission can be either contempt of the Commission, when it is not in Court Session, or contempt of the Commission when in Court Session, the Industrial Court. But proceedings for contempt may only be taken before the Industrial Court. See the Act, section 180.

## **Division 1 Contempt in the face or hearing of the Commission**

### **8A.1 Arrest**

If it is alleged, or it appears to the Industrial Court on its own view, that a person is guilty of contempt, committed in the face of the Commission or in the hearing of the Commission, the Court may—

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

### **8A.2 Charge, defence and determination**

- (1) When the contemnor is brought before the Industrial Court, the Court must—
  - (a) inform the contemnor of the contempt charge, and
  - (b) give the contemnor an opportunity to defend the charge.
- (2) After hearing the defence, the Industrial Court must—

- (a) determine the matter of the charge, and
- (b) make an order for the punishment or discharge of the contemnor.

### **8A.3 Interim custody**

- (1) Before the Industrial Court determines the matter of the charge, the Industrial Court may direct the contemnor—
  - (a) be kept in custody as the Court determines, or
  - (b) be released.
- (2) The Court may make a direction for the release of the contemnor on specified terms, including that the contemnor give security for a sum directed by the Court for the contemnor's appearance, in person, to answer the charge.

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

### **8A.4 Application of division**

This division applies to proceedings for contempt of the Commission other than for proceedings to which Division 1 applies.

### **8A.5 Commencement of proceedings by persons other than the Court**

- (1) For contempt committed in connection with proceedings in the Commission—
  - (a) an application for punishment for the contempt must be made by notice of motion in the proceedings, but
  - (b) if separate proceedings for punishment of the contempt are commenced, the separate proceedings may be continued unless the Industrial Court otherwise orders.
- (2) For contempt committed other than in connection with proceedings in the Commission—
  - (a) proceedings for punishment of the contempt must be commenced by summons, but
  - (b) if an application for punishment of the contempt is made by motion on notice in any proceedings, the application may be heard and disposed of in those proceedings, unless the Industrial Court otherwise orders.

### **8A.6 Motion or proceedings commencing by registrar on behalf of Court**

- (1) If it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court or of another court, the Court may, by order, direct the registrar to—

- (a) apply by motion for punishment of the contempt, or
  - (b) commence proceedings for punishment of the contempt.
- (2) Subrule (1) does not affect the right of another person to apply by motion for, or to commence proceedings for, punishment of contempt.

#### **8A.7 Statement of charge**

A statement (a **statement of charge**) specifying the contempt of which the contemnor is alleged to be guilty must be included, or filed, with—

- (a) the notice of motion, or
- (b) the summons.

#### **8A.8 Evidence**

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

#### **8A.9 Service**

The following must be served personally on the offender—

- (a) the notice of motion or summons,
- (b) the statement of charge,
- (c) the affidavits.

#### **8A.10 Arrest**

- (1) This rule applies if—
  - (a) a notice of motion for punishment of contempt has been filed, or
  - (b) proceedings have been commenced for punishment of a contempt.
- (2) If it appears to the Industrial Court that the contemnor is likely to abscond or withdraw from the jurisdiction, the Court may issue a warrant for the following until the contemnor is brought before the Court to answer the charge—
  - (a) for the offender's arrest,
  - (b) for the offender's detention in custody.
- (3) The warrant applies unless the contemnor gives security in the manner and the sum directed by the Court for the contemnor's appearance, in person, to answer the

charge and to submit to the judgment or order of the Court.

## **Part 9 Miscellaneous**

### **9.1 (Repealed)**

### **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.

### **Schedule 1 Application of UCPR**

Rule 1.6

#### **UCPR provisions that do not apply to Commission when not in Court session**

Part 5

Part 6

Part 16

Part 17

Part 20

Part 21

Part 22

Part 23

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

Part 31, Division 2

Part 32

Part 34

Part 37

Part 38

Part 39

Part 42

Part 43



Part 46

### **UCPR provisions that do not apply to Industrial Court**

Part 6

Part 16

Part 20, except for Division 4 (but Division 4 does not apply until after conciliation has been attempted under the Act, section 109)

Part 23, Divisions 1 and 2

Part 37

Part 38

Part 39

Part 42, Division 2

Part 43

## **Schedule 2 Number of copies to file in proceedings**

Rule 2.5(3)

### **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.

<b>Type of proceedings</b>	<b>Number of copies</b>
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
Application for the recovery of money or civil penalties under the <i>Industrial Relations Act 1996</i> , Chapter 7	original plus 1 copy
Application for the recovery of money or civil penalties under the <i>Fair Work Act 2009</i> of the Commonwealth	original plus 1 copy
Application under the <i>Criminal Procedure Act 1986</i>	original plus 1 copy
Applications under the <i>Work Health and Safety Act 2011</i>	original plus 1 copy
Notice of an intention to commence mutual gains bargaining under the Act, section 129N	original plus 1 copy

Written notice declaring mutual gains bargaining unresolved under the Act, section 129P(3)	original plus 1 copy
Dispute notification	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

## **Schedule 3 Conduct of unfair contract proceedings**

### **Part 1 Conciliations**

Rule 7D.5

- 1** Each party may be represented, but only by a person—
  - (a) who is fully aware of the matter, and
  - (b) who has the full authority to settle the matter.
- 2** Each party must attend the conciliation with information on—
  - (a) the costs incurred by the party to date, and
  - (b) if the matter were to proceed to a hearing—
    - (i) the estimate of the number of hearing days that would be involved, and
    - (ii) the estimate of the costs the party would incur.
- 3** The applicant must file and serve a statement on the mitigation of damage, or loss, not less than 7 days before the date fixed for the conference.
- 4** In the week before the conference, the parties must consult with each other to clearly identify the issues and matters in dispute.
- 5** If a party contends that a term of a written contract is an issue, the party must file and serve a copy of the following not less than 7 days before the date fixed for the conference—
  - (a) the contract, and
  - (b) a brief summary on the nature of the issue.
- 6** If a party believes there is a matter of fact or law not identified in the pleadings that would require determination if the matter were to proceed to a hearing, the party must—
  - (a) document the matter, and
  - (b) file and serve a copy of the relevant documentation not less than 7 days before the date fixed

for the conference.

## Part 2 Post-conciliation proceedings

Rule 7D.8

- 1 The applicant must file and serve the following—
  - (a) within 14 days after the certificate is issued—amendments of the originating process,
  - (b) within 28 days after the certificate is issued—all affidavits the applicant will rely on in the proceedings, other than those referred to in paragraph (c),
  - (c) within 14 days after the respondent’s affidavits are filed—affidavits in response to the respondent’s affidavits,
- 2 The respondent must file and serve the following—
  - (a) within 14 days after an amendment to the originating process is served—objections to the amendment by way of notice of motion,
  - (b) within 28 days after an amendment to the original process is served—all affidavits the respondent will rely on in the proceedings.
- 3 Each party must—
  - (a) within 14 days after all affidavits have been filed—serve on the other parties a list of additional documents, other than those exhibited in accordance with section 5, on which it intends to rely by way of evidence, and
  - (b) within 28 days after all affidavits have been filed—advise all other parties as to which of the documents will be the subject of consent to becoming evidence, and
  - (c) within 42 days after all affidavits have been filed—file and serve a supplementary court bundle.
- 4 Each witness’ evidence in chief must be way of clearly paginated affidavits and annexes.
- 5 Documents referred to in a party’s affidavit must be exhibited at the time of swearing in a bundle (a **court bundle**) that includes a list of all documents on which the party intends to rely by way of evidence in the proceedings.
- 6 A party’s court bundle must—
  - (a) be paginated and include an index, but
  - (b) is not required to include documents contained in another party’s court bundle if the reference to the document is made in the index.
- 7 A party seeking to rely on the oral evidence of a person from whom an affidavit cannot be obtained must, within the time specified for the filing of the party’s affidavit material, give to all other parties a notice—
  - (a) stating the name of the intended witness, and

- (b) containing an outline of the evidence intended to be adduced.
- 8** Summonses for the production of documents may be made returnable before the Registrar on a date that the Registrar conducts a list.
- 9** The following are to be dealt with by a duty judge on an interlocutory basis—
  - (a) applications for orders other than for photocopy access,
  - (b) claims for privilege,
  - (c) other similar matters.