

Industrial Relations Commission Rules 2022

[2022-733]



New South Wales

Status Information

Currency of version

Current version for 13 October 2025 to date (accessed 8 December 2025 at 23:37)

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

Provisions in force

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

Authorisation

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

File last modified 13 October 2025

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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—

appellant, for Part 7, Division 3—see rule 7.16.

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 means the *Fair Work Act 2009* of the Commonwealth.

file means to file with the Registry.

Full Bench, for Part 7, Division 3—see rule 7.15.

Industrial Court means the Commission in Court session.

notice of appeal, for Part 7, Division 3—see rule 7.16.

notice of intention to appeal, for Part 7, Division 3—see rule 7.16.

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](#).

trial judge, for Part 7, Division 3—see rule 7.16.

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.

3.4 Commencement of bullying proceedings

(1) This rule applies to an application to commence proceedings under the Act, Chapter 3A, Part 1.

(2) The applicant must serve the application on—

(a) any persons the application identifies as having engaged in bullying, and

- (b) the employer or principal contractor of the employee or employees who the application identifies as having been bullied at work, and
 - (c) a person conducting a business or undertaking identified in the application if the bullying occurs in connection with the business or undertaking.
- (3) The application may be served by—
 - (a) personal service, or
 - (b) post, or
 - (c) electronic service.
- (4) A respondent under subsection (2)(a)—
 - (a) may file a response within 7 days after the day the respondent was served, and
 - (b) must file a response if directed to do so by the Commission.
- (5) A respondent under subsection (2)(b) or (c) must file and serve a response within 7 days after the day the respondent was served.
- (6) The Commission may, at the Commission’s discretion, join respondents to, or remove respondents from, proceedings.

Note—

In accordance with the [Uniform Civil Procedure Rules 2005](#) (the **UCPR**), rule 1.7, rule 3.4(3) prevails over the UCPR, rule 10.20(2)(a) to the extent of the inconsistency.

3.5 Commencement of sexual harassment proceedings

- (1) This rule applies to an application to commence proceedings under the Act, Chapter 3A, Part 2.
- (2) The Registrar must serve the application on—
 - (a) any persons the application identifies as having engaged in sexual harassment, and
 - (b) the employer or principal of any persons the application identifies as having engaged in sexual harassment.
- (3) The application may be served by—
 - (a) personal service, or
 - (b) post, or
 - (c) electronic service.

- (4) A respondent under subsection (2)(a) or (b) must file and serve a response within 7 days after the day the respondent was served.
- (5) The Commission may, at the Commission's discretion, join respondents to, or remove respondents from, proceedings.

Note—

In accordance with the [Uniform Civil Procedure Rules 2005](#) (the **UCPR**), rule 1.7, rule 3.5(3) prevails over the UCPR, rule 10.20(2)(a) to the extent of the inconsistency.

3.6 Review of act of Registrar in proceedings not before Commission

- (1) This rule applies to an application to review a decision, direction, order or other act of the Registrar that was done in proceedings not before the Commission.
- (2) The application may be in the form approved by the Registrar.

Note—

In accordance with the [Uniform Civil Procedure Rules 2005](#) (the **UCPR**), rule 1.7, rule 3.6(2) prevails over the UCPR, rule 49.20(1) to the extent of the inconsistency.

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.

- (5) If a party appearing personally in proceedings before the Commission appoints an Australian legal practitioner or an agent to act in the proceedings on the party's behalf, the party must file and serve a notice of appearance for the legal practitioner or agent entering an appearance.

Note—

The Act, section 166(2) provides that, in certain proceedings, a party requires leave of the Commission to be represented by an Australian legal practitioner or an agent who is an industrial agent.

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.

4.9 Conduct of bullying and sexual harassment proceedings

- (1) This rule applies to proceedings, including an initial conciliation conference, under the Act, Chapter 3A.
- (2) The Commission—

- (a) may decide who may attend the proceedings, and
- (b) may conduct the proceedings in the way the Commission considers appropriate, including in one or more of the following ways—
 - (i) in private or in public,
 - (ii) online or in person,
 - (iii) with the parties separated or together.

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.

5.5A Disputes under [Work Health and Safety Act 2011](#)

- (1) This rule applies to proceedings to which the [Work Health and Safety Act 2011](#), Part 5, Division 7A applies.
- (2) Notice given under that Act, section 102C—
- (a) must be given to the Registrar—
 - (i) by delivering the notice to a Registry officer, or
 - (ii) by sending the notice by post to the Registry, or
 - (iii) by sending the notice to the Registry’s email address, or
 - (b) for an urgent dispute—may be given to the Registrar orally, including by

telephone.

- (3) The person giving a notice orally must give the Registrar written confirmation of the notice as soon as possible.
- (4) A copy of the notice, or the written confirmation, must be served as soon as reasonably practicable on the other parties affected by or involved in the dispute.
- (5) A union may notify the Registrar of the union's intent to join proceedings by filing a notice of appearance in the proceedings.

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

Note—

The Act, Part 7 applies provisions of the [Crimes \(Appeal and Review\) Act 2001](#) and the [Criminal Appeal Act 1912](#) to certain appeals to which this part applies. A reference in this part to the [Criminal Appeal Act 1912](#) is to that Act as applied by the Act, section 196.

Division 1 General

7.1A Application of division

The following rules do not apply to an appeal to which Division 3 applies—

(a) rule 7.1,

(b) rules 7.4–6.

7.1 Notice of 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.
- (1A) An appellant who has been ordered by the Commission in criminal proceedings to pay a monetary sum may apply to the Commission for an order suspending payment pending the determination by the Full Bench of the Commission of an appeal or application for leave to appeal under Division 3.
- (1B) The Commission may make an order suspending payment on terms the Commission considers just.
- (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.

7.3A Leave required for certain matters not included in notice of appeal

- (1) An appellant must apply for the leave of the Commission if—
 - (a) the appellant is intending to rely on a ground of appeal not stated in the notice of appeal, or
 - (b) the appellant is intending to rely on a ground of appeal stated in the notice of appeal and particulars have not been given in relation to the ground.
- (2) On an application, the Commission may—
 - (a) refuse leave, or
 - (b) grant leave on terms the Commission considers appropriate.

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 on the appellant 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

- (1) 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.
- (2) The case must be stated in writing and be signed by the member making the reference.
- (3) The Registrar must send a copy of the case stated to—
 - (a) the Australian legal practitioner representing each of the named parties, or
 - (b) if no Australian legal practitioner is representing a named party—the named party.
- (4) Subrules (2) and (3) apply unless the Industrial Court otherwise orders.

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.

Division 3 Criminal appeals to Full Bench of Industrial Court

Subdivision 1 Preliminary

7.15 Application of division

This division applies to appeals to the Full Bench of the Industrial Court (the **Full Bench**) in relation to criminal proceedings taken before a judicial member of the Commission.

7.16 Definitions

In this division—

appellant includes a person who files—

- (a) a notice of intention to appeal, and
- (b) a notice of appeal.

notice of appeal includes a notice of application for leave to appeal.

notice of intention to appeal includes a notice of intention to apply for leave to appeal.

trial judge, in relation to an appeal or proposed appeal to the Full Bench, means the judicial member of the Commission who presided over the trial.

Subdivision 2 Notices of intention to appeal

7.17 Notice of intention to appeal

A notice of intention to appeal—

- (a) must be in the approved form, and
- (b) must be signed by the appellant or an Australian legal practitioner representing the appellant, and
- (c) has effect for a period of 3 months after the day it is filed.

7.18 Application for extension of time

- (1) An application to extend the time to give a notice of intention to appeal must be signed by the appellant or an Australian legal practitioner representing the appellant.

Note—

The [Criminal Appeal Act 1912](#), section 10(1)(a) requires an appellant to give notice of intention to appeal, or notice of intention to apply for leave to appeal, within 28 days after the person is convicted or sentenced.

- (2) The Registrar may exercise the power of the Commission under the [Criminal Appeal Act 1912](#), section 10(1)(b) to extend the time to give a notice of intention to appeal.

7.19 Amended notice of intention to appeal

- (1) This rule applies if—

- (a) a notice of intention to appeal a conviction or sentence, but not both, has been filed, and
 - (b) the appellant intends subsequently to appeal both the conviction and sentence.
- (2) The appellant must file—
 - (a) an amended notice of intention to appeal in the approved form, and
 - (b) if required, an application for an extension of time.
- (3) The amended notice of intention to appeal—
 - (a) replaces the original notice of intention to appeal, and
 - (b) has effect for the remainder of the period the original notice of intention to appeal would have had effect.

7.20 Registrar to forward notices of intention to appeal

The Registrar must send the following to the respondent—

- (a) the notice of intention to appeal as filed,
- (b) if the appellant files an amended notice under rule 7.19—the notice of intention to appeal as amended.

Subdivision 3 Notices of appeal

7.21 Notice of appeal

- (1) A notice of appeal must be filed in the approved form.
- (2) A notice of appeal against a conviction or sentence by a defendant must be filed—
 - (a) if a notice of intention to appeal has been given—during the period in which the notice of intention to appeal has effect, or
 - (b) otherwise—within 3 months after the conviction or sentence.
- (3) For an appeal against a sentence under the [Criminal Appeal Act 1912](#), section 5D, a notice of appeal must be filed within 28 days after the sentence.

7.22 Effect of incomplete notice of appeal or application for leave to appeal

A notice of appeal against a conviction or sentence not accompanied by all the documents required by the approved form has effect as a notice of intention to appeal.

7.23 Service of notices of appeal

- (1) A notice of appeal, as filed, must be served on—

- (a) the respondent, and
 - (b) for an appeal under the [Criminal Appeal Act 1912](#), section 5D or 5DA, the last known Australian legal practitioner representing the respondent.
- (2) Service of a notice of appeal filed by a prosecutor must be effected by personal service if—
- (a) the defendant does not have legal representation, or
 - (b) the appeal is under the [Criminal Appeal Act 1912](#), section 5D or 5DA.

7.24 Notice of contention

- (1) This rule applies if a respondent to an appeal to which this division applies seeks to contend the decision below should be affirmed on grounds other than those relied on below.
- (2) The respondent must 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 on the appellant within—
 - (a) 14 days after service on the respondent of the application commencing the appeal, or
 - (b) a further period allowed by the Commission.

Subdivision 4 Conduct of proceedings

7.25 Abandonment of ground of appeal

An appellant intending to abandon a ground of appeal stated in the notice of appeal, or relied on with the leave of the Full Bench, must file a notice in the approved form abandoning the ground.

7.26 Exclusion of certain matters as grounds for appeal without leave

A ground of appeal or an application for leave to appeal relating to a decision as to the admission or rejection of evidence given by the trial judge may only be allowed—

- (a) if objection was taken to the decision by the appellant at the trial, or
- (b) with leave of the Full Bench.

Subdivision 5 Resolution of proceedings

7.27 Abandonment of proceedings

- (1) An appellant may abandon an appeal or application for leave to appeal by filing a

notice in the approved form.

(2) On receipt of the notice—

- (a) for an appeal—the appeal is taken to have been dismissed by the Full Bench, or
- (b) for an application for leave to appeal—the application is taken to have been refused by the Full Bench.

7.28 Refund of penalty or costs paid

Unless the Full Bench orders differently, a person who is successful in an appeal is entitled to be repaid money the person has been ordered by the trial judge to pay as penalty or costs.

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 conciliation—matters under the Act

(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.3A Conduct of conciliation—matters under Fair Work Act

- (1) This rule applies to applications to the Industrial Court for an order under the Fair Work Act, section 545 or 546.
- (2) Conciliation of an application to which this rule applies must be attempted by a conciliation conference conducted after reasonable notice is given to the parties.
- (3) 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.

7A.5 Registrar's functions

- (1) The Registrar may, for the purpose of resolving proceedings to which this part applies before a hearing, exercise functions in relation to the following—
 - (a) listing matters before the Registrar,
 - (b) making directions about procedure, including referring the matter to conciliation under rule 7A.3 or 7A.3A.
- (2) The functions of the Registrar conferred by the Act, regulations or rules extend to the exercise of those functions in relation to claims to which this part applies.

7A.6 Conduct of post-conciliation proceedings

- (1) If all reasonable attempts to settle a matter by conciliation have been made without success, the matter must be allocated to—
 - (a) a judicial member for orders, directions or determination, or
 - (b) the Registrar for directions about procedure.
- (2) If the matters in dispute are settled and orders are required to give effect to the settlement, the matter must be allocated to a judicial member or the Registrar for orders to be made.

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) (Repealed)

7D.6 Conduct of post-conciliation proceedings

- (1) If all reasonable attempts to settle a matter by conciliation have been made without success, the matter must be allocated to—
 - (a) a judicial member for orders, directions or determination, or
 - (b) the Registrar for directions about procedure.
- (2) If the matters in dispute are settled and orders are required to give effect to the settlement, the matter must be allocated to a judicial member or the Registrar for orders to be made.

7D.7, 7D.8 (Repealed)

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

(1A) (Repealed)

- (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 (Repealed)

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.

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
Application for the recovery of money or civil penalties under the Industrial Relations Act 1996 , Chapter 7	original plus 1 copy
Application for the recovery of money or civil penalties under the Fair Work Act 2009 of the Commonwealth	original plus 1 copy
Application under the Criminal Procedure Act 1986	original plus 1 copy
Applications under the Work Health and Safety Act 2011	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 (Repealed)