

Queensland



Industrial Relations Act 1999

INDUSTRIAL RELATIONS (TRIBUNALS) RULES 2000

**Reprinted as in force on 1 January 2004
(includes commenced amendments up to 2003 SL No. 320)**

Reprint No. 1F

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Also see endnotes for information about—

- **when provisions commenced**
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Queensland



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INDUSTRIAL RELATIONS (TRIBUNALS) RULES 2000

[as amended by all amendments that commenced on or before 1 January 2004]

PART 1—PRELIMINARY

1 Short title

These rules may be cited as the *Industrial Relations (Tribunals) Rules 2000*.

2 Commencement

These rules commence on 1 January 2001.

3 Definitions

The dictionary in schedule 2 defines particular words used in these rules.

3A What a reference to application or applicant includes

(1) A reference in these rules, other than in rule 7(1) or 114,¹ to an application includes a reference to a notice of appeal under a safety Act provision.

(2) A reference in these rules to an applicant includes a reference to an appellant to an appeal under a safety Act provision.

4 Proceedings to which rules apply

These rules apply to a proceeding before the court, commission or registrar or an industrial magistrate.

1 Rule 7 (Starting proceedings) or 114 (Application to appeal other than from industrial magistrate)

5 Purpose of rules

The purpose of these rules is to provide for the just and expeditious disposition of the business of the court, commission, registrar and industrial magistrate at a minimum of expense.

PART 2—INDUSTRIAL TRIBUNALS AND REGISTRY

Division 1—Application of part

6 Application of part 2

This part applies to a proceeding before the court, commission or registrar.

Division 2—Procedures of industrial tribunals

Subdivision 1—Starting proceedings

7 Starting proceedings

(1) A proceeding before the court, commission or registrar, other than an appeal under a safety Act provision, must be started by an application in the approved form.²

(2) However, subrule (1) does not apply—

- (a) if the court, commission or registrar or these rules requires otherwise; or
- (b) to a proceeding started on the initiative of the commission³ or registrar; or

2 See rule 3A (What a reference to application or applicant includes). “Safety Act provision” is defined in schedule 2 (Dictionary).

3 For proceedings started on the initiative of the commission see rule 82.

- (c) to a proceeding started as directed by the Minister under the Act; or
- (d) to a proceeding arising out of the giving of a notice of industrial dispute under section 229⁴ of the Act.

(3) An application to appeal, or notice of appeal under a safety Act provision, is a document starting a proceeding.

(4) A notice of appeal under a safety Act provision must be in the approved form.

(5) A proceeding, other than an appeal under a safety Act provision, starts when the document starting the proceeding—

- (a) is filed or otherwise received under the Act or these rules; or
- (b) for a document issued by the court, commission or registrar—is issued.

8 Who has carriage of proceeding

(1) An applicant has carriage of a proceeding unless—

- (a) the court, commission or registrar orders another person to have the carriage; or
- (b) the court or commission orders the registrar to have the carriage.

(2) The person who has carriage of a proceeding must take all necessary steps in the proceeding until—

- (a) their discontinuance by leave of the court, commission or registrar; or
- (b) the final determination of the proceeding by the court, commission or registrar.

9 Form of applications

(1) An application must—

- (a) be divided into consecutively numbered paragraphs, each detailing, as far as is convenient, a separate matter; and

4 Section 229 (Notice of industrial dispute) of the Act

- (b) name the relevant provisions of any legislation or industrial instrument that relates to the application; and
- (c) state the relief or orders sought; and
- (d) state any directions required to expedite the proceedings.

(2) An application, other than an excluded application, must be supported by an affidavit—

- (a) contained in the application; or
- (b) if it is not practicable for the application to contain the affidavit—accompanying the application.

(3) In this rule—

“excluded application” means any of the following—

- (a) an application to appeal;⁵
- (b) an application for leave to appeal;⁶
- (c) an application for a stay of a decision under appeal;⁷
- (d) an application under section 163, 212 or 696⁸ of the Act;
- (e) a notice of appeal under a safety Act provision.

10 Form of affidavit for rule 9(2)

For rule 9(2), an affidavit supporting an application must—

- (a) identify the applicant; and
- (b) if not made by a party in person—state the capacity and authority under which the person is making the affidavit; and
- (c) state concisely the material facts relied on to support the application; and

5 See rules 114 (Application to appeal other than from industrial magistrate) and 119 (Application to appeal from industrial magistrate).

6 “Leave to appeal” is defined in schedule 2 (Dictionary).

7 “Stay of a decision under appeal” is defined in schedule 2 (Dictionary).

8 Section 163 (Deciding designated awards), 212 (Deciding designated awards) or 696 (Aged or infirm persons permits) of the Act

- (d) state any other matters required under these rules; and
- (e) comply with subdivision 6.⁹

11 Document starting proceeding, or application in existing proceeding, to state address and phone and fax number

(1) Unless otherwise provided by these rules, a document starting a proceeding, or an application in an existing proceeding, must not be filed unless it states—

- (a) the applicant's residential or business address; and
- (b) the applicant's phone number (if any); and
- (c) if the applicant has no phone number—a way of contacting the applicant by phone; and
- (d) the applicant's fax number (if any).

(2) If a lawyer or agent acts for the applicant, a document starting a proceeding, or an application in an existing proceeding, must not be filed unless it states—

- (a) the name of—
 - (i) the lawyer, and if the lawyer practices in a firm of lawyers, the name of the firm; or
 - (ii) the agent, and if the agent is employed by a business or corporation or operates under a business name, the name of the business or corporation or the business name; and
- (b) the address of the lawyer's or agent's place of business; and
- (c) if the address under paragraph (b) is not the applicant's address for service or is not a Queensland address—an address for service in Queensland; and
- (d) the lawyer's or agent's phone number and fax number.

(3) An applicant or an applicant's lawyer or agent may include the applicant's, lawyer's or agent's email address in a document starting a proceeding, or an application in an existing proceeding, where documents in the proceeding may be served on the applicant.

⁹ Subdivision 6 (Evidence and affidavits)

12 General requirements for documents for filing

(1) Unless these rules provide otherwise, a document for filing must—

- (a) be on A4 (210 mm x 297 mm) paper; and
- (b) be on 1 side of the page only; and
- (c) if typewritten—
 - (i) be in Times New Roman font; and
 - (ii) be in 12 point font size; and
 - (iii) have only fully justified text; and
- (d) if not typewritten—be printed in upper case letters; and
- (e) be clearly legible; and
- (f) be well spaced and divided into convenient paragraphs; and
- (g) have paragraphs numbered on the inner edge of the margin for each new topic; and
- (h) have a 2 cm margin on each side; and
- (i) be numbered consecutively on each page; and
- (j) not contain a logo or other embellishment; and
- (k) state a short description of the nature of the document; and
- (l) if the party or person ordered or permitted to appear or to be represented in the proceeding is represented by an agent, be accompanied by a notice of appointment of agent under rule 102;¹⁰ and
- (m) contain the information, including the applicant's address for service, required under rule 11.

(2) However, if the address for service is changed under these rules, a document filed after the change must state the new address for service instead of the original address.

(3) Subrule (1)(l) applies only if the party or person has not previously filed a notice of appointment of agent in the proceeding.

¹⁰ Rule 102 (Notice of appointment of agent)

13 Filing of documents

(1) Unless these rules or a direction of the court, commission or registrar otherwise requires, a party seeking to file a document must give the registrar the original and 3 copies of the document.

(2) The registrar may refuse to accept a document for filing or another document if it does not comply with—

- (a) the Act; or
- (b) another Act that allows access to the commission or court; or
- (c) these rules.

(3) A document is filed when the appropriate fee (if any) is paid and the document is stamped in the registry.

14 Ways of filing

A document may be filed—

- (a) by delivering it to the registry; or
- (b) by posting it to the registry with a written request that the document be filed; or
- (c) if expressly allowed by the court, commission or registrar—by transmitting it to the registry by fax, email or another method, subject to the original document being tendered and the fee, if any, being paid; or
- (d) for rule 129(3) or 147(1),¹¹ by fax; or
- (e) for an appeal from an industrial magistrate—under rule 119.¹²

15 Document becomes a record on filing

(1) A document becomes a record of the court or commission and may be used before the court, commission or registrar only if it has been filed.

(2) Subrule (1) applies unless the court, commission or registrar otherwise allows.

11 Rule 129 (Discontinuing application under Act, s 74) or 147 (Filing QWA or ancillary document by fax)

12 Rule 119 (Filing and service of application to appeal)

16 Change of address for service

Notice of any change in a party's address for service must be filed and served on all other parties to the proceeding immediately after the change.

Subdivision 2—Amendments

17 Amending an application before hearing

(1) An application may be amended, before a hearing, by the applicant filing an amended application that incorporates the amendments.

(2) The amended application must replace the whole of the application.

(3) The registrar may make a directions order if the registrar considers it necessary because of the amended application.

18 Form of amendments

(1) An amendment must be distinguished from the original text by—

- (a) if text is being added—underlining or shading the added text; or
- (b) if text is being deleted—crossing out the deleted text.

(2) An amended application must be in the approved form.

19 Amending an application during hearing

(1) After the hearing of an application has started, an applicant may apply to the court, commission or registrar hearing the application for leave to amend the application.

(2) If the proposed amendments substantially alter the scope and nature of the claim, the applicant must file an amended application that incorporates the proposed amendments.

(3) An amendment may be allowed or disallowed on the terms the court, commission or registrar considers appropriate.

20 Serving amended application

(1) An amended application must be served by the applicant on each other party to the proceedings as soon as practicable after the amended application is filed, but at least 7 clear days before the hearing.

(2) If, when the amended application is filed, the original application has not been served on a party to the proceedings or a party named in a directions order, the party must also be served with the original application.

(3) The court, commission or registrar may dispense with service of an amended application or give directions about service.

21 Objecting to amended application

(1) A party served with an amended application may object to the amendment—

- (a) by filing a response in the approved form within 7 clear days after being served; or
- (b) if the application is scheduled for hearing within the 7 days—at the hearing.

(2) The response must state—

- (a) whether the objection is to all or part of the proposed amended application; and
- (b) if the objection is to part of the proposed amended application—which part; and
- (c) concise reasons for the objection.

(3) The party must immediately serve the response on all other parties to the proceedings.

22 Determination of amended application

(1) If a party objects to all or part of an amended application, the court, commission or registrar may, after hearing the objecting party, allow or disallow the proposed amendment.

(2) The decision must be made by—

- (a) if the hearing of the application has not started—the registrar; or

(b) if the hearing of the application has started—the court, commission or registrar hearing the application.

(3) The court, commission or registrar may make the decision on the terms the court, commission or registrar considers appropriate.

(4) If no objection is made under rule 21(1), the amendment is taken to be authorised by the court, commission or registrar.

Subdivision 3—Service

23 Who is to be served

(1) The party by or for whom a document is filed or issued in a proceeding before the court, commission or registrar must serve the document on each other party to the proceeding.

(2) Subrule (1) does not apply if—

- (a) the court, commission, or registrar otherwise directs; or
- (b) the Act or these rules provide otherwise.

24 Time for service

(1) Unless these rules otherwise provide, documents required to be served under these rules must be served as soon as practicable, but at least 3 business days before—

- (a) the return day stated in the document; or
- (b) the day on which it is proposed to apply.

(2) Despite subrule (1), the court, commission or registrar may direct a document be served in a shorter time.

25 Service not allowed on certain days

A person can not serve a document on Good Friday or Christmas Day unless the court, commission or registrar otherwise orders.

26 How personal service is performed

(1) To serve a document personally, the person serving it must give the document, or a copy of the document, to the person intended to be served.

(2) However, if the person does not accept the document, or copy, the party serving it may serve it by putting it down in the person's presence and telling the person what it is.

(3) It is not necessary to show to the person served the original of the document.

27 Service of documents

(1) The following are ways by which a document may be served on the person to be served—

- (a) personal service under rule 26;
- (b) for an organisation or association—leaving the document with or tendering it to the secretary of the organisation or association;
- (c) leaving the document with someone who is apparently an adult living at the relevant address;
- (d) if there is no-one at the relevant address—leaving the document at the relevant address in a position where it is reasonably likely to come to the person's attention;
- (e) if the relevant address is within a building or area to which the person serving the document has been denied access—leaving the document at the building or area in a position where it is reasonably likely to come to the person's attention;
- (f) posting¹³ the document to the relevant address;
- (g) if the person has given—
 - (i) a fax number under these rules—faxing the document to the person; or
 - (ii) an email address where documents in the proceeding may be served on the person—emailing the document to the person.

13 For the meaning of service by post see the *Acts Interpretation Act 1954*, section 39A (Meaning of service by post etc.).

- (h) if a proceeding is brought against the person in relation to a business carried on by the person under a name or style other than the person's name—leaving the document at the person's place of business with a person who appears to have control or management of the business at the place.

(2) However—

- (a) an attendance notice under section 232(2)¹⁴ of the Act may not be served by email; and
- (b) any other attendance notice may not be served by fax or email.

(3) The charge for service under this rule must be paid by the party required to serve the document.

(4) In this rule—

“relevant address”, of a person to be served, means—

- (a) the person's address for service; or
- (b) for an individual who does not have an address for service—
- (i) the individual's last known place of business or residence; or
- (ii) if the proceeding is brought by or against an individual in the name of a partnership—the principal or last known place of business of the partnership; or
- (c) for a corporation, organisation or association that does not have an address for service—its head office or its principal or registered office.

28 Service of directions order on applicant

(1) The registrar may serve a copy of a directions order on the applicant by notifying the applicant that a sealed copy of the directions order is available for collection at the registry.

(2) The registrar is then taken to have served the directions order—

- (a) 48 hours after the order is made available for collection; or
- (b) within another time specified by the registrar in the notice.

14 Section 232 (Compulsory conference) of the Act

29 Service by an officer of the court

An officer of the court, when required by the registrar, must serve any process or other document required to be served.

30 Substituted service

(1) If, for any reason, it is impracticable to serve a document in a way required under this subdivision, the court, commission or registrar may make an order substituting another way of serving the document.

(2) The court, commission or registrar may, in the order, specify the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.

Example—

Bringing the document to the attention of the person by phone or public advertisement.

(3) The court, commission or registrar may, in the order, specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.

(4) An application for an order under this rule must be in the approved form.

31 Informal service

If—

- (a) for any reason, a document is not served as required by this subdivision but the document or a copy of it came into the possession of the person to be served; and
- (b) the court, commission or registrar is satisfied on evidence before it that the document came into the person's possession on or before a particular day;

the court, commission or registrar may, by order, decide that the possession of the document is service for these rules on the day it came into the person's possession or another day stated in the order.

32 Service on agent

(1) This rule applies if a person living or carrying on business outside Queensland (the “**principal**”) enters into a contract in Queensland through an agent living or carrying on business in Queensland.

(2) The court, commission or registrar may, without deciding the agent’s authority or business relationship with the principal, give leave for a document starting a proceeding relating to a proceeding arising out of the contract to be served on the agent.

(3) The party serving the document on the agent must immediately send to the principal a copy of the order and the document starting the proceeding.

(4) The documents required to be sent under subrule (3) must be sent to the principal’s address outside Queensland by post.

33 Service by agreement

(1) This rule applies if, before or after a proceeding starts, the parties to the proceeding agree that a document relating to the proceeding may be served on a party, or someone else for the party, in a way or at a place, in Queensland or elsewhere, specified in the agreement.

(2) The document may be served in accordance with the agreement.

34 When affidavit of service is required

(1) A party serving a document under rule 23¹⁵ must, as soon as practicable after serving the document, file an affidavit of service of the document.

(2) For a document served under rule 29,¹⁶ the registrar may direct if and when an affidavit of service is required.

35 Form of affidavit of service

(1) An affidavit of service of a document must be in the approved form and—

15 Rule 23 (Who is to be served)

16 Rule 29 (Service by an officer of the court)

- (a) for an affidavit of personal service—must be made by the person who served the document and state the following—
 - (i) the person’s full name;
 - (ii) the time, day and date the document was served;
 - (iii) the place of service;
 - (iv) the name of the person served and how the person was identified; or
 - (b) otherwise—
 - (i) must state the relevant dates and the facts showing service; and
 - (ii) may be made on information given to, or the belief of, the person causing the service; and
 - (iii) if made on information given to the person—must state the source of the information.
- (2) An affidavit of service must—
- (a) have a copy of the document served attached to it as an exhibit; or
 - (b) be written on a copy of the document served; or
 - (c) if the document served has been filed—mention the document in a way sufficient to enable the document to be identified.

36 Identity of person served

For proving service, a statement by a person of his or her identity or that he or she holds a particular office or position is evidence of the identity or that the person holds the office or position.

37 Special requirements for service by fax

(1) A document served by fax must include a cover page stating the following—

- (a) the sender’s name and address;
- (b) the name of the person to be served;
- (c) the date and time of transmission;

- (d) the total number of pages, including the cover page, transmitted;
- (e) the phone number from which the document is transmitted;
- (f) the name and phone number of a person to contact if there is a problem with the transmission;
- (g) that the transmission is for service under a stated rule.

(2) An affidavit of service of a document by fax must have attached to it as an exhibit, the transmission advice, generated by the sender's fax machine, indicating the transmission was successful.

Subdivision 4—Directions orders

38 Directions orders

(1) The court, commission or registrar may make a directions order about the conduct of a proceeding on the application of a party or on the initiative of the court, commission or registrar.

(2) A directions order may, for example, relate to the following—

- (a) specifying the parties who are to be served with applications, related material or other documents;
- (b) requiring evidence of the service;
- (c) another matter relating to service of an application;
- (d) scheduling of conferences, mediation conferences, preliminary hearings and hearings before the court, commission or registrar;
- (e) requiring further and better particulars of an application;
- (f) requiring the applicant to file and serve all material to be relied on in support of the application by affidavit or another form;
- (g) requiring a party to respond to a notice to admit facts;
- (h) requiring the respondent to file and serve material in reply;
- (i) requiring the applicant to file and serve material in reply;
- (j) requiring the parties—
 - (i) to confer to agree on matters that can be agreed on; and
 - (ii) to identify points in issue; and
 - (iii) to report back to the court, commission or registrar;

- (k) requiring the parties to file a written outline of submissions or submissions about the subject matter of the application;
- (l) requiring—
 - (i) evidence to be given by affidavit; or
 - (ii) statements to be filed and served, in affidavit form, of the primary evidence of a witness;
- (m) requiring—
 - (i) the identification of the provisions of any relevant legislation or industrial instruments; and
 - (ii) a list of cases to be relied on in support of or in response to proceedings to be provided;
- (n) requiring submissions in writing to justify the necessity to carry out inspections or hearings at other locations;
- (o) requiring disclosure of documents;
- (p) requiring inspection of documents.

(3) An application for a directions order about a matter mentioned in subrule (2)(b) to (p) must be in the approved form unless the application was made in a document starting a proceeding.

(4) A draft of the directions order sought must be filed with the application.

39 Hearing of parties

The court, commission or registrar may hear parties to a proceeding before making a directions order if it is considered necessary or appropriate.

40 Further directions

The court, commission or registrar may make a further directions order, at any time after a directions order has been made, if it is considered necessary or appropriate.

41 Hearing and decision for proceeding on application for directions

If the parties agree, the court, commission or registrar may hear and decide a proceeding on an application for directions.

42 Failure to attend or to comply with directions order

(1) This rule applies if—

- (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar specifying a time, date and place for a hearing or conference in the proceeding; and
- (b) the party fails to attend at the hearing or conference.

(2) This rule also applies if a party to a proceeding receives notice of a directions order made by the court, commission or registrar and the party fails to comply with the order.

(3) The court, commission or registrar may—

- (a) dismiss the proceeding; or
- (b) make a further directions order; or
- (c) make another order dealing with the proceeding that the court, commission or registrar considers appropriate; or
- (d) make orders under paragraphs (b) and (c).

Subdivision 5—Response**43 Response to application**

(1) If the court, commission or registrar considers it appropriate to help effectively dispose of an application, the court, commission or registrar may direct a party to file a response to the application by a specified time.

(2) A response must be in the approved form and—

- (a) admit or deny, either with or without qualification, each statement of fact made in the application; and
- (b) state whether the relief claimed is agreed to or opposed.

(3) A response may contain a counter-claim in response to the matters raised in the application.

(4) If the response contains a counter-claim, the counter-claim must be set out in enough detail to clearly specify the nature of the relief sought.

(5) A respondent must file the original and 3 copies of the response and serve a copy immediately on the applicant and any other parties.

(6) If a party fails to file a response within the time allowed under subrule (1), the court, commission or registrar may impose terms on the party about the party's participation in the proceeding.

Subdivision 6—Evidence and affidavits

44 Powers for evidence

The court, commission or registrar may dispense with evidence on any matter—

- (a) on which all parties have agreed in writing; or
- (b) for which the court, commission or registrar considers evidence is unnecessary.

45 Notice to admit fact or document

(1) A party to a proceeding (the “**first party**”) may, by notice in the approved form served on another party, ask the other party to admit, for the proceedings only, the facts or documents specified in the notice.

(2) If the other party does not, within 14 days, serve a notice on the first party disputing the facts or the authenticity of the document, the other party is taken to admit, for the proceeding only, the fact or the authenticity of the document specified.

(3) The other party may, with the leave of the court, commission or registrar, withdraw an admission taken to have been made under subrule (2).

46 Evidence on affidavit

(1) Evidence may be given by affidavit if the court, commission or registrar so directs.

(2) However, if required by the court, commission or registrar, the person making the affidavit must appear to give evidence or for cross-examination.

(3) If the person making the affidavit does not appear as required, the affidavit can not be used in evidence without the leave of the court, commission or registrar.

(4) Unless the court, commission or registrar gives leave, an affidavit may be used in a proceeding only if it has been filed.

(5) The party filing an affidavit must immediately serve a copy of the affidavit on each other party to the proceeding.

47 Limitation of affidavit

A person, in an affidavit, may only make—

- (a) for an affidavit used in an application in a proceeding—statements to the best of the person's own knowledge, information or belief; or
- (b) otherwise—statements of facts of the person's own knowledge.

48 Form of affidavit

An affidavit must—

- (a) be in the approved form; and
- (b) be in the first person; and
- (c) identify the person making it; and
- (d) state the residential or business address or place of employment of the person making it; and
- (e) be divided into consecutively numbered paragraphs, with each paragraph, as far as practical, confined to a distinct part of the subject matter; and
- (f) state whether the affidavit is sworn or affirmed; and
- (g) if the person swears an affidavit on behalf of another person or entity—state that the person is authorised to swear the affidavit; and
- (h) state the day on which, and place where, it was sworn; and

- (i) be signed by the person making the affidavit in the presence of the person authorised to take the affidavit; and
- (j) be signed by the person making the affidavit and the person taking the affidavit on each page.

49 Exhibits

(1) A document mentioned in an affidavit and used with the affidavit (an “**exhibit**”) must be an original document unless it is impractical to use the original.

(2) A document attached to an affidavit as an exhibit must—

- (a) be titled in the same way as the affidavit; and
- (b) contain the case number of the proceeding; and
- (c) have a certificate on it signed by the person taking the affidavit to the effect of the following—

‘This is the (document, object, thing etc.) marked ‘A’ mentioned in the affidavit of A.B. sworn before me this day of 20..’.

50 Alterations

Any interlineation, erasure or other alteration in an affidavit must be initialled by—

- (a) the person making the affidavit; and
- (b) the person taking the affidavit.

51 Certificate of reading or signature for person making affidavit

(1) If an affidavit is sworn by a person who is incapable of reading the affidavit or physically incapable of signing it, the person taking the affidavit must certify—

- (a) that fact; and
- (b) that the affidavit was read or otherwise communicated in the presence of the person making the affidavit; and
- (c) that the person seemed to understand the affidavit; and
- (d) that the person signified that the person made the affidavit.

(2) The affidavit can not be used in evidence without the certificate unless the court, commission or registrar decides otherwise.

52 Specified time for filing affidavits

If an affidavit must be filed within a specified time, an affidavit filed after that time can not be used in evidence unless the court, commission or registrar otherwise decides, with or without conditions.

53 Scandalous or oppressive matter

If there is scandalous or oppressive matter in an affidavit, the court, commission or registrar may order that—

- (a) the affidavit be removed from the file; or
- (b) the affidavit be removed from the file and destroyed; or
- (c) the scandalous or oppressive matter be struck out.

Subdivision 7—Attendance notice

54 Attendance notices

(1) On the request of a party the registrar may, and on the direction of the president or a commissioner the registrar must, issue an attendance notice to a person.

(2) A request for an attendance notice must—

- (a) be in the approved form; and
- (b) state the name or designation by office or position of the person to whom the attendance notice is directed, unless the court, commission or registrar otherwise directs; and
- (c) be filed; and
- (d) be accompanied by the attendance notice, in the approved form, the person making the request wants issued.

(3) An attendance notice, other than an attendance notice for a compulsory conference, may only be directed to a single person.

(4) The name or designation by office or position of the person to whom an attendance notice is directed must be stated in the notice before it is issued.

55 Attendance notice to produce

An attendance notice requiring a person to produce a document or thing must—

- (a) adequately describe the document or thing; and
- (b) contain a notice, in the approved form, telling the person to whom the attendance notice is directed that the person has the right to apply to the court or commission to have the attendance notice set aside on any sufficient grounds, including—
 - (i) the document or thing is not relevant to the proceedings; or
 - (ii) privilege; or
 - (iii) oppressiveness, including oppressiveness because substantial expense may be incurred that may not be reimbursed; or
 - (iv) noncompliance with these rules.

56 Inspection of material

(1) A document or thing produced to the court, commission or registrar, whether produced voluntarily or under an attendance notice, may be inspected by—

- (a) the court, commission or registrar; and
- (b) any party the court, commission or registrar allows.

(2) However, information obtained from the document must not be made public without the permission of the court, commission or registrar.

(3) If the court, commission or registrar considers that part of a document does not relate to a matter in issue, the court, commission or registrar may order the part be closed.

57 Setting aside attendance notice

The court or commission may, by order, set aside part or all of an attendance notice.

58 Allowance for attendance and expenses

(1) A person who attends the court or commission under an attendance notice is entitled to—

- (a) the person's reasonable expenses of travelling to attend; and
- (b) the allowance payable to a witness in a civil action in the Supreme Court.

(2) If a party requested the person's attendance, the party is responsible for paying the allowance and expenses to the person.

(3) The court or commission may treat the failure of a party to pay the person's expenses as a lawful excuse for section 661¹⁷ of the Act.

59 Production by non-party

(1) This rule applies if the person named in an attendance notice requiring the production of a document or thing is not a party to the proceeding.

(2) Unless the court or commission otherwise directs, the attendance notice must permit the person to produce, by the day before the day production is required, the document or thing at the registry.

(3) If a document or thing is produced at the registry under subrule (2), the registrar must—

- (a) issue a receipt; and
- (b) deal with the documents or thing as the court or commission directs.

(4) An attendance notice that only requires production of a document or thing may be satisfied by an agent of the person named in the notice producing the document or thing to the court or commission.

60 Serving attendance notice

An attendance notice must be served under rule 27.¹⁸

17 Section 661 (Contempt by witness) of the Act

18 Rule 27 (Service of documents)

Subdivision 8—Hearing

61 Request for notice of hearing

(1) An applicant in a proceeding before the court or commission may at any time request the court or commission in writing to fix a time, date and place for the hearing of the application.

(2) The court or commission may fix a time, date and place if the court or commission—

- (a) is satisfied all necessary procedures have been completed; or
- (b) otherwise considers it appropriate.

(3) The registrar must give the applicant and other parties notice of the time, date and place as soon as practicable after it is fixed.

(4) The notice may be given orally or in writing.

62 Hearing in respondent's absence

A commissioner may hear and decide an application under section 278¹⁹ of the Act in the respondent's absence, if the commission is satisfied—

- (a) the application contained a warning that the application may be dealt with in the respondent's absence; and
- (b) the applicant has proved service of the application on the respondent; and
- (c) the application contains sufficient particulars relied on in support of the application.

63 Rehearing of proceeding heard in respondent's absence

(1) This rule applies if the commission makes an order under section 278 of the Act in the respondent's absence.

(2) The respondent may apply to the commission to rehear the application.

19 Section 278 (Power to recover unpaid wages and superannuation contribution etc.) of the Act

(3) The application may only be made within 30 days of the decision or order in the proceeding being made or released, whichever is the later.

(4) If the commission is satisfied it is necessary in the interests of justice for the application to be reheard, the commission may rehear the application.

Subdivision 9—Discontinuing proceeding

64 Discontinuance of applications other than under Act, s 74

(1) This rule applies to an application before the court, commission or registrar to which rule 129²⁰ does not apply.

(2) The applicant may ask to be allowed to discontinue the matter by filing a written request, in the approved form, with the registrar.

(3) When filing the request, the applicant must forward a copy of the request by any method mentioned in subdivision 3 to each of the parties to the application.

(4) A party may object to the discontinuance by written notice to the registrar within 14 days after being notified of the request to discontinue.

(5) If no party objects within the 14 days, the court, commission or registrar may allow the matter to be discontinued.

(6) If a matter is allowed to be discontinued, the court, commission or registrar must note the file to that effect.

(7) If a notice of objection is received within the 14 days, the court, commission or registrar may allow or disallow the request for discontinuance on the terms the court, commission or registrar considers appropriate.

65 Other discontinuance

The court, commission or registrar may at any time in a hearing, allow the applicant to discontinue a matter on the terms the court, commission or registrar considers appropriate.

²⁰ Rule 129 (Discontinuing application under Act, s 74)

Subdivision 10—Costs**66 Costs**

(1) If the court or commission makes an order for costs under section 335²¹ of the Act, the court or commission, in making the order, may have regard to—

- (a) for a proceeding before the commission—the costs payable on the scale of costs for Magistrates Courts under the *Uniform Civil Procedure Rules 1999*, schedule 3;²² or
- (b) for a proceeding before the full bench—the costs payable on the scale of costs for the District Court under the *Uniform Civil Procedure Rules 1999*, schedule 2;²³ or
- (c) for a proceeding before the court—the costs payable on the scale of costs for the Supreme Court under the *Uniform Civil Procedure Rules 1999*, schedule 1;²⁴ or
- (d) any other relevant factor.

(2) The court may order that costs be assessed by the registrar and, in assessing costs, the registrar may have regard to the *Uniform Civil Procedure Rules 1999*, chapter 17, part 2.²⁵

Subdivision 11—Recovery of amounts under orders**67 Certificate under Act, s 336**

A certificate under section 336²⁶ of the Act must be in the approved form.

21 Section 335 (Costs) of the Act

22 *Uniform Civil Procedure Rules 1999*, schedule 3 (Scale of costs—Magistrates Courts)

23 *Uniform Civil Procedure Rules 1999*, schedule 2 (Scale of costs—District Court)

24 *Uniform Civil Procedure Rules 1999*, schedule 1 (Scale of costs—Supreme Court)

25 *Uniform Civil Procedure Rules 1999*, chapter 17 (Costs), part 2 (Costs)

26 Section 336 (Recovery of amounts under orders) of the Act

Division 3—Commission’s functions and powers**68 Application for secret ballot**

An application for a direction under section 235²⁷ of the Act to conduct a secret ballot on strike action must be in the non-chapter 12 approved form.

69 Conducting secret ballot

(1) This rule applies if the registrar is directed to conduct a secret ballot.

(2) The registrar is the returning officer at the ballot.

(3) The returning officer must compile a roll of persons entitled to vote at the ballot from—

- (a) the registers kept under section 368 or 544²⁸ of the Act; or
- (b) any other list requested by the returning officer.

(4) The returning officer may—

- (a) appoint presiding officers, poll clerks, scrutineers, and other persons as officers to assist in the conduct of the ballot; and
- (b) appoint a person appointed under paragraph (a) as a deputy returning officer.

(5) Only the following persons may enter the ballot room—

- (a) persons who are present to vote;
- (b) the returning officer;
- (c) persons appointed under subrule (4).

(6) The ballot may be taken only by voting papers.

(7) The returning officer or deputy must give a voter—

- (a) a voting paper in the approved form; and
- (b) anything else necessary for taking the ballot.

(8) A voter is entitled to 1 vote only.

27 Section 235 (Secret ballot on strike action) of the Act

28 Section 368 (Employee register) or 544 (Members and officers registers) of the Act

(9) The returning officer or deputy must, as soon as practicable after the poll closes, count the votes received.

(10) The returning officer must keep custody of all voting papers, rolls, and documents used at the ballot for at least 1 year.

70 Application to declare persons to be employees

For section 275²⁹ of the Act, an application must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the class of persons to be declared employees; and
- (c) state the work performed by the persons; and
- (d) state the industry in which the work is performed; and
- (e) state the nature and effect of the contract for services.

71 Application to amend or void contract

(1) For section 276³⁰ of the Act, an application must be in the non-chapter 12 approved form and state how the contract to which the application relates—

- (a) is a contract of service not covered by an industrial instrument; or
- (b) is a contract for services.

(2) The application must also state—

- (a) how the contract conditions are harsh, unconscionable or unfair; or
- (b) how the contract is against the public interest; or
- (c) how the contract provides, or has provided, a total remuneration of less than that which a person performing the work of an employee would receive under an industrial instrument or the Act; or
- (d) how the contract is designed to, or does, avoid the provisions of an industrial instrument.

29 Section 275 (Power to declare persons to be employees or employers) of the Act

30 Section 276 (Power to amend or void contracts) of the Act

(3) An affidavit contained in or accompanying the application must state that the applicant—

- (a) has not made an application under section 74³¹ of the Act for the same matter; and
- (b) is not a person mentioned in section 276(6)(b)³² of the Act.

(4) If the contract for services or contract of service is written or partly written it must be attached as an exhibit to the affidavit.

72 Application for injunction under Act, s 277 or Whistleblowers Protection Act 1994, s 47

An application for an injunction under section 277³³ of the Act or the *Whistleblowers Protection Act 1994*, section 47³⁴ must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the facts relied on.

73 Application to recover unpaid wages and superannuation contribution etc.

(1) An application for an order for the payment of an amount under section 278³⁵ of the Act must be in the approved form and—

- (a) state the industrial instrument involved or other basis for the claim; and
- (b) state the nature of the work undertaken by the employee the subject of the claim; and
- (c) state that the applicant and any other person eligible to make an application under section 278(3) of the Act in relation to the

31 Section 74 (Application for reinstatement) of the Act

32 Section 276 (Power to amend or void contracts) of the Act

33 Section 277 (Power to grant injunctions) of the Act

34 *Whistleblowers Protection Act 1994*, section 47 (Right to apply for Industrial Commission injunction)

35 Section 278 (Power to recover unpaid wages and superannuation contribution etc.) of the Act

employee has not made an application under section 399 or 408³⁶ of the Act for the same matter; and

- (d) state details, in itemised form, of the applicant's claim; and
- (e) state the dates the amounts claimed became payable; and
- (f) state the total amount claimed;³⁷ and
- (g) show how each calculation was made; and
- (h) provide the following information—
 - (i) the employer's name, address and phone and fax number (if any);
 - (ii) if the employer is a business—a contact name for the employer;
 - (iii) if the employer has no phone—a way the employer may be contacted by phone.

(2) If the application is by a trainee or apprentice, that fact must be stated in the application or affidavit accompanying it.

74 Orders about representation rights of employee organisations

An application under section 279³⁸ of the Act for an order about a demarcation dispute must be in the non-chapter 12 approved form.

75 Application to reopen

An application to reopen proceedings under section 280³⁹ of the Act must be in the non-chapter 12 approved form and state the grounds relied on.

36 Section 399 (Recovery of unpaid wages etc.) or 408 (Recovery of unpaid superannuation contribution) of the Act

37 Under the Act, section 278 (Power to recover unpaid wages and superannuation contribution etc.) a claim can not be made for more than \$20 000.

38 Section 279 (Orders about representation rights of employee organisations) of the Act

39 Section 280 (Procedures for reopening) of the Act

76 Application to refer matter to full bench

An application to refer a matter to the full bench under section 281(4)⁴⁰ of the Act must be in the non-chapter 12 approved form, unless the vice president or registrar approves otherwise.

77 Application for interpretation of industrial instrument

(1) An application for an interpretation of an industrial instrument under section 284⁴¹ of the Act must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the title of any relevant Act, industrial instrument or related document and the number of the section or clause under which the question arises; and
- (c) state the questions to be answered; and
- (d) be accompanied by a statement, signed by all parties to the proceeding, of the agreed facts relied on for the application.

(2) Subrule (1)(d) does not apply to an application by an inspector.

78 Application for reinstatement of training contract cancelled by coercion

An application for an order under the *Vocational Education, Training and Employment Act 2000*, section 62⁴² must be in the non-chapter 12 approved form.

40 Section 281 (Reference to full bench) of the Act

41 Section 284 (Interpretation of industrial instruments) of the Act

42 *Vocational Education, Training and Employment Act 2000*, section 62 (Reinstatement of training contract cancelled by coercion)

Division 4—Practice***Subdivision 1—Court and commission*****79 Using recording devices**

A person who is not an accredited officer of the State Reporting Bureau must not use a recording device in a hearing or conference, unless the court, commission or registrar allows it.

80 Practice notes

The court, commission or registrar may, by industrial gazette notice, issue practice notes for the guidance of parties to any proceedings.

81 Joining matters

(1) A party to a proceeding may apply to the court or commission for the matter to be joined with another proceeding.

(2) The court or commission may order proceedings to be joined if it considers—

- (a) substantially the same question is involved in all the proceedings;
or
- (b) the decision in 1 proceeding is likely to determine or seriously impact on the other; or
- (c) it is otherwise appropriate or desirable.

(3) When joining proceedings, it is not necessary—

- (a) to make a written order joining the proceedings; or
- (b) for the parties to consent.

(4) If a party claims to be adversely affected by the joining of proceedings, the party may apply to separate the proceedings by advising the registrar and any other affected party in writing before the hearing of the proceeding.

82 Commission acting on own initiative

If the commission acts on its own initiative—

- (a) the commission must notify the registrar in writing; and
- (b) the registrar must record the matter and take any action the commission directs.

83 Extension or shortening of time

(1) Subject to the Act and these rules, a party to a proceeding before the court, commission or registrar may apply to the court, commission or registrar to extend or shorten the time prescribed for doing anything.

(2) The application may be joined with or form part of a document starting a proceeding.

84 Exhibits not to be taken out

A party to a proceeding must not take an exhibit out of the court, commission or registrar without an order of the court, commission or registrar.

85 Correcting errors

(1) The court, commission or registrar may correct an error in an industrial instrument, order or direction.

(2) The court, commission or registrar may act on—

- (a) the initiative of the court, commission or registrar; or
- (b) the application of an interested party.

(3) In this rule—

“**error**” means a clerical mistake, misnomer, inaccurate description, omission or other manifest defect or irregularity.

86 Continuance of proceedings—death of party

(1) A proceeding in the court, commission or before the registrar does not end because of the death of a party.

(2) However, a person can not take any further step in the proceeding without—

- (a) an order of the court, commission or registrar; and
- (b) following directions given by the court, commission or registrar about how to proceed.

87 Publishing decisions etc.

(1) The registrar may publish in the industrial gazette—

- (a) a decision of the court, commission or registrar; and
- (b) notice of the making or amendment of a certified agreement.

(2) Despite subrule (1)(a), the registrar must not publish a decision or interpretation about a QWA or ancillary document in a way that discloses the identity of either party to the QWA or document.

(3) The registrar must publish the following in the industrial gazette—

- (a) a certified agreement, or an amendment of a certified agreement, if the commission directs it be published;
- (b) an award or amendment of an award;
- (c) notice of the making of a general ruling under section 287⁴³ of the Act;
- (d) the date specified in the general ruling as the date on and from which the general ruling has effect.

(4) The court, commission or registrar may, in the public interest or for another reason the court, commission or registrar considers appropriate—

- (a) withhold publication of a document; or
- (b) modify a document, before publication, in a way that does not affect the essence of the document.

43 Section 287 (General rulings) of the Act

Subdivision 2—Registry**88 Registrar may refer certain documents to court or commission**

(1) This rule applies if the registrar considers a document for filing is an abuse of the process of the court or commission or frivolous or vexatious.

(2) The registrar may refer the document to the court or commission before filing it.

(3) The court or commission may direct the registrar—

- (a) to file the document; or
- (b) to refuse to file the document.

89 Powers

(1) For a matter in which the registrar has jurisdiction under the Act, including under a reference by the court or commission, the registrar may—

- (a) call persons by attendance notice; and
- (b) take affidavits; and
- (c) examine parties and witnesses; and
- (d) adjourn a matter or hearing; and
- (e) amend or give leave to amend an application, notice, or other proceeding; and
- (f) extend the time prescribed for lodging a document or doing an act (whether or not the time has expired); and
- (g) make an order about the following—
 - (i) an application in a proceeding to be taken before the hearing;
 - (ii) the costs of an application in a proceeding;
 - (iii) the issues to be submitted to the court or commission;
 - (iv) the naming and joining of parties;
 - (v) the persons to be served with notice of proceedings;
 - (vi) particulars of the claims of parties;

- (vii) a notice to admit facts or documents;
- (viii) disclosure;
- (ix) inspection of documents;
- (x) examination of witnesses;
- (xi) the place, time and nature of a hearing.

(2) If the registrar exercises a power under subrule (1) on the application of a party, the registrar may exercise the power on the terms the registrar considers appropriate.

PART 3—PROCEEDINGS BEFORE INDUSTRIAL MAGISTRATES

Division 1—Proceedings for claims

90 Application of div 1

This division applies to the following claims—

- (a) a claim under section 399⁴⁴ of the Act;
- (b) a claim for damages sustained by an employee because the employer failed to pay the employee's wages;
- (c) a claim under chapter 11, part 2, division 2 of the Act;⁴⁵
- (d) a claim for unpaid superannuation under section 408⁴⁶ of the Act;
- (e) a claim for compensation under section 83⁴⁷ of the Act;
- (f) a claim for damages for breach of an agreement made under an industrial instrument;

44 Section 399 (Recovery of unpaid wages etc.) of the Act

45 Chapter 11 (Records and wages), part 2 (Wages and occupational superannuation), division 2 (Protection for wages) of the Act

46 Section 408 (Recovery of unpaid superannuation contribution) of the Act

47 Section 83 (What employer must do to dismiss employee) of the Act

- (g) a claim for repayment of a fee under section 408G⁴⁸ of the Act;
- (h) a claim for the recovery of a debt under the *Workers' Compensation and Rehabilitation Act 2003*, section 580.⁴⁹

91 Starting a claim

- (1) A claim must be started by an application in the approved form.
- (2) The application must be signed by a justice of the peace.
- (3) Two or more claims may be joined in 1 proceeding.

92 Procedure for claims before industrial magistrate

(1) An application for a claim before an industrial magistrate is to be heard and decided as if it were a complaint under the *Justices Act 1886* for a charge of a simple offence.

(2) However, the time for starting a proceeding under section 399, 408 or 408G⁵⁰ of the Act is the time allowed under those sections and not under the *Justices Act 1886*.

(3) Also, the time for starting a claim under the *Workers' Compensation and Rehabilitation Act 2003* is the time allowed under that Act and not under the *Justices Act 1886*.

93 Substituted service

(1) If, for any reason, it is impracticable to serve a document in a way required under the *Justices Act 1886* in a proceeding before an industrial magistrate, the industrial magistrate may make an order substituting another way of serving the document.

(2) The industrial magistrate may, in the order, specify the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.

48 Section 408G (Magistrate may order repayment of fees received by private employment agent in civil proceedings) of the Act

49 *Workers' Compensation and Rehabilitation Act 2003*, section 580 (Recovery of debts under this Act)

50 Section 399 (Recovery of unpaid wages etc.), 408 (Recovery of unpaid superannuation contribution) or 408G (Magistrate may order repayment of fees received by private employment agent in civil proceedings) of the Act

Example—

Bringing the document to the attention of the person by phone or public advertisement.

(3) The industrial magistrate may, in the order, specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.

(4) An application for an order under this rule must state the grounds relied on and be supported by an affidavit.

94 Summons

(1) If an application for a claim is made before a justice, the justice may issue a summons directed to the respondent requiring the respondent to appear before an industrial magistrate at a stated time and place to answer the claim and to be further dealt with according to law.

(2) The summons and a copy of the application for a claim must be served on the respondent.

(3) For a proceeding under the *Workers' Compensation and Rehabilitation Act 2003* mentioned in rule 90(h), the summons must require the respondent to appear before an industrial magistrate at—

- (a) the court in the Magistrates Courts district in which the respondent resides or has its registered office; or
- (b) a court in a division of the Brisbane Magistrates Courts district that is nearest to the respondent's place of residence or registered office.

(4) The *Justices Act 1886*, section 56⁵¹ applies to service of a summons as if an application for a claim were a complaint for a simple offence.

95 Alternative dispute resolution process applies

The *Uniform Civil Procedure Rules*, chapter 9, part 4⁵² apply to a claim made under rule 90 with necessary changes.

51 *Justices Act 1886*, section 56 (Service of summonses)

52 *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

96 Directions orders

(1) An industrial magistrate may make a directions order about the conduct of a proceeding on the request of a party or on the initiative of the industrial magistrate.

(2) A directions order may, for example, relate to the following—

- (a) specifying the parties who are to be served with applications, related material or other documents;
- (b) requiring evidence of the service;
- (c) another matter relating to service of an application;
- (d) scheduling of conferences, mediation conferences, preliminary hearings and hearings;
- (e) requiring further and better particulars of an application;
- (f) requiring the applicant to file and serve all material to be relied on in support of the application by affidavit or another form;
- (g) requiring a party to respond to a notice to admit facts;
- (h) requiring the respondent to file and serve material in reply;
- (i) requiring the applicant to file and serve material in reply;
- (j) requiring the parties—
 - (i) to confer to agree on matters that can be agreed on; and
 - (ii) to identify points in issue; and
 - (iii) to report back to the industrial magistrate;
- (k) requiring the parties to file a written outline of submissions or submissions about the subject matter of the application;
- (l) requiring—
 - (i) evidence to be given by affidavit; or
 - (ii) statements to be filed and served, in affidavit form, of the primary evidence of a witness;
- (m) requiring—
 - (i) the identification of the provisions of any relevant legislation or industrial instruments; and
 - (ii) a list of cases to be relied on in support of or in response to proceedings to be provided;

- (n) requiring disclosure of documents;
- (o) requiring inspection of documents.

96A Failure to attend or to comply with directions order

(1) This rule applies if—

- (a) a party to a proceeding receives notice of a directions order made by an industrial magistrate specifying a time, date and place for a hearing or conference in the proceeding; and
- (b) the party fails to attend at the hearing or conference.

(2) This rule also applies if a party to a proceeding receives notice of a directions order made by an industrial magistrate and the party fails to comply with the order.

(3) An industrial magistrate may—

- (a) dismiss the proceeding; or
- (b) make a further directions order; or
- (c) make another order dealing with the proceeding the industrial magistrate considers appropriate; or
- (d) make orders under paragraphs (b) and (c).

97 Onus of proof

The applicant for a claim bears the onus of proving the applicant's claim on the balance of probabilities.

98 Adjournment

If an industrial magistrate can not attend at the time appointed for the hearing of a proceeding, the clerk of the court may adjourn the proceeding to a suitable date before an industrial magistrate.

99 Enforcement of order

(1) This rule applies if an industrial magistrate orders an amount be paid for breach of an agreement made under an industrial instrument.

(2) The person to whom the amount is payable may obtain from the Industrial Magistrates Court in which the order was made a certificate in the approved form stating—

- (a) the amount payable; and
- (b) the persons by and to whom the amount is payable.

(3) The certificate must be signed by—

- (a) the industrial magistrate; or
- (b) the clerk of the court.

(4) On the filing of the certificate in the Magistrates Court to the extent of the amount of damages, the certificate is enforceable as an order of the Magistrates Court.

Division 2—Costs and expenses

100 Costs and expenses

An industrial magistrate may allow costs and expenses for a proceeding for a claim under rule 90 under the scale of fees for Magistrates Courts under the *Uniform Civil Procedure Rules 1999* as if the proceeding were in a Magistrates Court.

PART 4—LAWYERS, AGENTS AND OTHER REPRESENTATIVES

101 Representation in proceedings

Unless the Act or these rules provide otherwise, an act required or permitted to be done by a party or person in a proceeding before the court, commission, industrial magistrate or registrar may be done by—

- (a) the party or person; or
- (b) the party's or person's lawyer or agent; or
- (c) if the party or person is an organisation or association—an officer or member of the organisation or association.

102 Notice of appointment of agent

(1) An agent may be appointed under section 319(1)(a)⁵³ of the Act only by—

- (a) filing a notice of appointment of agent in the approved form, signed by the party or person appointing the agent; and
- (b) serving a copy of the notice on all parties to the proceeding.

(2) Subrule (1)(a) applies only if the notice has not already accompanied a document that has been filed.⁵⁴

(3) On filing, the address for service in the notice is the party's or persons's address for service.

103 Withdrawal of appointment as lawyer or agent

A party or person who has appointed a lawyer or agent may withdraw the appointment by filing a notice in the approved form in the registry and serving a copy of the notice on all other parties to the proceeding.

104 Lawyer's notice of address for service

(1) Unless an address for service has already been filed and served in another way, a lawyer appointed under section 319(2) of the Act must, as soon as practicable after being appointed, file and serve on each other party to the proceeding a notice of address for service.

(2) The notice must be in the approved form.

105 Change of lawyer or agent

(1) This rule applies if a party or person changes the party's or person's lawyer or agent.

(2) The newly appointed lawyer or agent must, as soon as practicable after appointment, file and serve on all other parties to the proceedings and the person's former lawyer or agent a notice of change of lawyer or agent.

(3) The notice must be in the approved form.

53 Section 319 (Representation of parties) of the Act

54 For the requirement for a notice to accompany a document for filing, see rule 12 (General requirements for documents for filing).

(4) On filing, the address for service in the notice is the party's or person's address for service.

106 Making or signing documents for organisation or association

If a document is made or signed by an organisation or association under these rules, the document must be made or signed in accordance with the rules of the organisation or association.

107 No representation by struck off or suspended lawyers

A party may not be represented in a proceeding by a person who is struck off the roll of barristers or solicitors or suspended from practice.

PART 5—APPEALS

Division 1—General

108 Application of pt 5

This part applies to an appeal—

- (a) from a decision of the full bench, commission, an industrial magistrate or the registrar; or
- (b) to the commission against a stand-down; or
- (c) under the *Vocational Education, Training and Employment Act 2000*, section 230;⁵⁵ or
- (d) under a safety Act provision.

109 Record for particular appeals

(1) This rule applies to an appeal from a decision—

⁵⁵ *Vocational Education, Training and Employment Act 2000*, section 230 (Appeal to industrial commission against council or other decisions)

Industrial Relations (Tribunals) Rules 2000

- (a) of the commission; or
 - (b) of the registrar; or
 - (c) appealable under a safety Act provision; or
 - (d) appealable under the *Vocational Education, Training and Employment Act 2000*, section 230.
- (2) The record for the appeal consists of the following—
- (a) the application to appeal, or notice of appeal under a safety Act provision;
 - (b) any of the following that is the subject of the appeal—
 - (i) an order;
 - (ii) an industrial instrument;
 - (iii) a training contract;
 - (iv) a registered training contract;
 - (v) a completion certificate;
 - (vi) a qualification or statement of attainment;
 - (vii) a declaration, variation of a declaration or refusal to vary a declaration of a prohibited employer;
 - (viii) a written refusal by the council to approve the temporary stand down of an apprentice or trainee from his or her apprenticeship or traineeship;
 - (c) a notice to show cause under rule 120B(2) or 201(2)⁵⁶ relating to the proceeding in which the decision was made;
 - (d) a notice to show cause under section 233(7)⁵⁷ of the Act relating to the decision;
 - (e) a notice to show cause under the *Training and Employment Regulation 2000*, section 25⁵⁸ relating to the decision;
 - (f) any written representations made in response to a notice to show cause mentioned in paragraph (c) to (e);

56 Rule 120B (Striking out application to appeal by released appellant after at least 2 month's delay) or 201 (Striking out proceeding after at least 1 year's delay)

57 Section 233 (Enforcing commission's orders) of the Act

58 *Training and Employment Regulation 2000*, section 25 (Show cause notice)

- (g) an information notice for the decision given under the *Training and Employment Act 2000*, section 230(3);⁵⁹
- (h) the decision, including the reasons for the decision;
- (i) any published reasons for the decision;
- (j) an industrial instrument or statement of principle mentioned in the decision, including reasons;
- (k) if the decision was made in a proceeding—
 - (i) a transcript or notes of oral evidence made in the proceeding; and
 - (ii) any list of exhibits, and each exhibit, in the proceeding; and
 - (iii) an affidavit or statement of evidence in the proceeding.

(3) The court or commission may direct that the record be supplemented by other material.

(4) Any party to the appeal may seek a direction under subrule (3).

110 Application for stay of decision under appeal

(1) In this rule—

“**stay of a decision under appeal**” means any of the following—

- (a) an order that a decision be stayed under section 347⁶⁰ of the Act;
- (b) an order that a decision be stayed under the *Vocational Education, Training and Employment Act 2000*, section 231;⁶¹
- (c) a stay of a decision under the *Electrical Safety Act 2002*, section 171 or 174;⁶²

59 *Training and Employment Act 2000*, section 230 (Appeal to industrial commission against council or other decisions)

60 Section 347 (Stay of decision appealed against) of the Act

61 *Vocational Education, Training and Employment Act 2000*, section 231 (Stay of decision being appealed)

62 *Electrical Safety Act 2002*, section 171 (Stay of operation of original decision) or 174 (Stay of operation of decisions)

(d) a stay of a decision under the *Workplace Health and Safety Act 1995*, section 151 or 154.⁶³

(2) An application for a stay of a decision under appeal must—

- (a) be in the approved form; and
- (b) include—
 - (i) details of the interest of the applicant; and
 - (ii) any other facts and circumstances relevant to the exercise of the jurisdiction of the tribunal.

(3) An application for a stay of a decision under appeal must not form part of—

- (a) an application for leave to appeal; or
- (b) an application to appeal.

111 Service of application

(1) This rule applies to—

- (a) an application to appeal; or
- (b) an application for leave to appeal; or
- (c) an application for a stay of a decision under appeal; or
- (d) a notice of appeal under a safety Act provision.

(2) The appellant must, within 7 days after the day the application or notice is filed, serve the application or notice on—

- (a) all respondents to the appeal; and
- (b) anyone else the appeal tribunal may direct.

(3) The appellant must file an affidavit of service of the application or notice within 7 days after the day of service.

(4) If the council is a respondent to the appeal, it is enough for subrule (2) if the appellant serves the application on the council.

⁶³ *Workplace Health and Safety Act 1995*, section 151 (Stay of operation of original decisions) or 154 (Stay of operation of decisions)

112 Service of application if respondent is the council

(1) This rule applies if—

- (a) the council is a respondent to an appeal under section 230 of the *Vocational Education, Training and Employment Act 2000*; and
- (b) the council is served with an application to appeal.

(2) The council must serve a copy of the following documents on the appellant and any other person who may be directly affected by the relief sought in the appeal—

- (a) a document mentioned in rule 109(2)(b), (e), (g), or (h);
- (b) written representations made in response to a notice to show cause under the *Training and Employment Regulation 2000*, section 25 relating to the decision being appealed.

(3) The council must promptly send the originals of the documents to the registrar with a notice stating the names, addresses and contact phone and fax numbers, if any, of the persons served under subrule (2).

113 Failure to prosecute appeal

If the appellant fails to comply with any of the following, the court or commission may, at or before the hearing of the appeal, on its own initiative or on application by the respondent, dismiss the appeal for want of prosecution—

- (a) any step required under the Act or these rules; or
- (b) any direction or order, including a direction or order about filing or serving a written outline of submissions or argument.

Division 2—Appeal to court, full bench or commission**114 Application to appeal other than from industrial magistrate**

An application⁶⁴ starting an appeal to the court, full bench or commission (an “**application to appeal**”), other than an appeal from a decision of an industrial magistrate, must⁶⁵—

- (a) be filed; and
- (b) state the name and last known address of each respondent or other party; and
- (c) state whether the appeal is from all or part (and which part) of the decision appealed from; and
- (d) state concise grounds of the appeal; and
- (e) state the decision the appellant wants instead of the decision appealed from; and
- (f) if the appeal is from a decision of the full bench—state whether the president was a member of the full bench.

115 Application for leave to appeal to full bench

(1) An application for leave of the full bench to appeal to the full bench must be in the approved form.

(2) An application under section 342(1) or (2)⁶⁶ of the Act must state—

- (a) the name and last known address of each respondent or other party; and
- (b) the grounds of the appeal; and
- (c) the facts and circumstances relied on to argue that the matter is of such importance that an appeal should be brought in the public interest.

(3) For section 342(1) of the Act, the grounds of appeal must not include an error of law or excess, or want, of jurisdiction.

64 See rule 3A (What a reference to application or applicant includes) and rule 7 for a notice of appeal starting an appeal under a safety Act provision.

65 See rule 7(1) for the required form of an application starting an appeal.

66 Section 342 (Appeal from commission, magistrate or registrar) of the Act

116 Application refused

If the full bench refuses to grant leave to appeal—

- (a) the appeal is taken to have been struck out; and
- (b) a further application for leave to appeal, or appeal, can not be filed for the subject matter of the struck out appeal.

117 Response

(1) A respondent opposing the granting of the full bench's leave to appeal must file with the registrar a response in the approved form stating—

- (a) the grounds relied on; and
- (b) the facts supporting the grounds.

(2) The response must be served on all other parties within 21 days after the day of service of the application or the further time the full bench may allow.

118 Application to appeal to full bench from registrar

(1) An application to appeal under section 342(6) or (7)⁶⁷ of the Act must state—

- (a) the name and last known address of each respondent or other party; and
- (b) the grounds of the appeal; and
- (c) that the appeal is not in relation to a decision mentioned in section 287(9)⁶⁸ of the Act; and
- (d) that the appeal is not in relation to a decision mentioned in section 695⁶⁹ of the Act.

(2) The grounds of appeal must not include an error of law or excess, or want, of jurisdiction.

67 Section 342 (Appeal from commission, magistrate or registrar) of the Act

68 Section 287 (General rulings) of the Act

69 Section 695 (Student's work permit) of the Act

(3) Subrule (1)(c) does not apply if the appeal is made to the full bench as constituted when a general ruling under section 287(9) of the Act was made.

119 Application to appeal from industrial magistrate

An application to appeal from a decision of an industrial magistrate must⁷⁰—

- (a) be filed in the Magistrates Court at the place where the decision was made; and
- (b) state the grounds of the appeal.

120 Industrial magistrate may order appellant's release from custody

(1) This rule applies to an appellant to an appeal from a decision of an industrial magistrate.

(2) If the appellant is in custody only in relation to the subject matter of the proceeding in which the decision was made, an industrial magistrate may order the appellant's release from custody.

120A Form of arrest warrant

A warrant under section 341(4)⁷¹ of the Act must be in the approved form.

120B Striking out application to appeal by released appellant after at least 2 month's delay

(1) This rule applies if—

- (a) an application to appeal from a decision of an industrial magistrate has been filed; and
- (b) the appellant has been released from custody under rule 120; and
- (c) no action has been taken for at least 2 months since the later of the following—

70 See rule 7(1) for the required form of an application to appeal.

71 Section 341 (Appeal from commission, magistrate or registrar) of the Act

- (i) the registrar's receipt of the application;
- (ii) the last action was taken in the application.

(2) The registrar may, by written notice, require the appellant to show cause in writing, within 21 days after the day the notice is given, why the application should not be struck out.

(3) The notice must state a warning that if the appellant does not show cause within the time stated in the notice, the application may be struck out.

(4) The appellant's response to the notice to show cause must—

- (a) state the steps taken in the proceeding in which the decision appealed from was made; and
- (b) explain the circumstances of the delay; and
- (c) state the steps (including a timetable) proposed to be taken to progress the proceeding; and
- (d) state any prejudice suffered or likely to be suffered by another party to the proceeding if the proceeding is not struck out; and
- (e) state the merits of the proceeding; and
- (f) state why the registrar or court should not strike out the application despite the delay.

(5) After considering any response by the appellant to the notice to show cause, the registrar may do 1 of the following—

- (a) strike out the application;
- (b) list the matter of showing cause for hearing before the court, with or without directions;
- (c) list the application for hearing, with or without directions;
- (d) make another order dealing with the application the registrar considers appropriate.

(6) On a hearing of the matter of showing cause, the court may do 1 of the following—

- (a) strike out the application;
- (b) list the application for hearing, with or without directions;
- (c) make another order dealing with the application the court considers appropriate.

(7) The striking out by the court or registrar of the application also disposes of any other application in the proceeding that has not been disposed of, other than in relation to costs.

(8) If the application is struck out, the registrar must give the parties written notice that the court or registrar has struck out the application.

121 Clerk of court to send documents to registrar

On the filing of an appeal in a Magistrates Court, the clerk of the court must promptly send the originals of the following documents to the registrar of the industrial registry—

- (a) the application to appeal;
- (b) the application for a claim or complaint;
- (c) the depositions;
- (d) the exhibits, if practicable;
- (e) the records of the proceeding, including any other proceeding, before the industrial magistrate;
- (f) the industrial magistrate's decision.

PART 6—GENERAL CONDITIONS OF EMPLOYMENT

121A Application for order for payment instead of long service leave

An application under section 53(3)⁷² of the Act must—

- (a) be in the approved form; and
- (b) state the grounds on which the application is made.

72 Section 53 (Payment instead of long service leave) of the Act

121B Application for order for payment of proportionate payment for long service leave

(1) This rule applies to an application under section 278⁷³ of the Act for an order for payment of that part of an employee's unpaid wages that are for long service leave payable under section 43(3)⁷⁴ of the Act.

(2) The application must—

- (a) be in the approved form; and
- (b) state the grounds on which the application is made.

122 Application for order ensuring equal remuneration for work of equal or comparable value

(1) An application for an order under chapter 2, part 5⁷⁵ of the Act must be in the non-chapter 12 approved form.

(2) If the application is made by an organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order, an affidavit contained in or accompanying the application must state the name of the organisation.

PART 7—DISMISSALS**123 Application for reinstatement**

(1) An application for reinstatement under section 74(2)⁷⁶ of the Act must be filed in the approved form.

(2) The applicant must—

- (a) serve a copy of the application on the employer within 7 days after filing the application; and

73 Section 278 (Power to recover unpaid wages and superannuation contribution etc.) of the Act

74 Section 43 (Entitlement) of the Act

75 Chapter 2 (General employment conditions), part 5 (Equal remuneration for work of equal or comparable value) of the Act

76 Section 74 (Application for reinstatement) of the Act

- (b) file an affidavit of service in the approved form within 7 days after serving the application.

124 Application for compensation order

An application for an order for compensation under section 83(4)(b)⁷⁷ of the Act must be in the non-chapter 12 approved form.

125 Application for order about severance and other separation benefits

(1) An application for an order under section 87⁷⁸ of the Act must be in the non-chapter 12 approved form.

(2) If the application is made by an organisation whose rules entitle it to represent the industrial interests of an employee to be covered by the order, an affidavit contained in or accompanying the application must state the name of the organisation.

126 Application for order for contravention of Act, s 90

(1) An application for an order under section 90⁷⁹ of the Act must be in the non-chapter 12 approved form.

(2) If the application is made by an organisation whose rules entitle the organisation to represent the industrial interests of an employee to be covered by the order, an affidavit contained in or accompanying the application must state—

- (a) the name of the organisation; and
- (b) the facts it is alleged constitute the contravention of section 90 of the Act.

77 Section 83 (What employer must do to dismiss employee) of the Act

78 Section 87 (Orders about severance allowance and other separation benefits) of the Act

79 Section 90 (Employer must give notice of proposed dismissals) of the Act

127 Application for order for contravention of Act, s 90A

(1) An application for an order under section 90A⁸⁰ of the Act must be in the non-chapter 12 approved form.

(2) If the application is made by an organisation whose rules entitle the organisation to represent the industrial interests of an employee to be covered by the order, an affidavit contained in or accompanying the application must state—

- (a) the name of the organisation; and
- (b) the facts it is alleged constitute the contravention of section 90A of the Act.

128 Application for reinstatement order for injured employee

An application under section 95(4)⁸¹ of the Act for a reinstatement order must be in the non-chapter 12 approved form.

129 Discontinuing application under Act, s 74

(1) This rule applies to an application under section 74⁸² of the Act.

(2) The applicant may, at any time before the start of a hearing of the application, discontinue the application by filing a notice in the approved form.

(3) The notice may be filed by fax.

(4) However, the original notice must be sent immediately to the registry.

(5) Unless the application is discontinued at a conference held under section 75⁸³ of the Act, the applicant must serve the notice on the other parties to the proceeding immediately.

(6) If a matter is allowed to be discontinued, the court, commission or registrar must make a note on the file to that effect.

80 Section 90A (Employer must consult with employee organisations about dismissals) of the Act

81 Section 95 (Reinstatement of injured employees) of the Act

82 Section 74 (Application for reinstatement) of the Act

83 Section 75 (Conciliation before application heard) of the Act

PART 8—FREEDOM OF ASSOCIATION

130 Application for exemption from membership

(1) An application for exemption from membership of an organisation on the grounds of a person's conscientious beliefs must be by way of a letter to the registrar or an industrial magistrate.

(2) The letter must state the following—

- (a) applicant's full name;
- (b) applicant's private address;
- (c) applicant's private and business contact phone numbers;
- (d) applicant's occupation;
- (e) name and address of the business of the applicant's employer;
- (f) name of the employee organisation covering the calling in which the applicant is, or is seeking to be, employed;
- (g) grounds on which the application is made;
- (h) whether the applicant has been issued with an exemption certificate within the last 12 months.

131 Application for order about prohibited conduct

(1) An application for an order under section 120⁸⁴ of the Act must be in the non-chapter 12 approved form.

(2) The application must contain or be accompanied by an affidavit stating—

- (a) the section of the Act under which it is alleged that prohibited conduct has been engaged in; and
- (b) the facts it is alleged constitute engaging in prohibited conduct, including the prohibited reason⁸⁵ alleged.

84 Section 120 (Remedies) of the Act

85 See section 104 (Meaning of "engaging in" conduct for a "prohibited reason" for ch 4) of the Act

(3) If the application is made by an industrial association for an entity entitled to apply under section 117(a)⁸⁶ of the Act, the affidavit must also state that the entity is a member or is eligible to become a member of the industrial association.

PART 9—AWARDS

131A Approved forms for applications—Act, s 125

An application under section 125⁸⁷ of the Act must be in the non-chapter 12 approved form.

131B Making or amending awards that relate to remuneration of employees

An affidavit contained in or accompanying an application under section 125 of the Act to make or amend an award that relates to remuneration of employees must state the facts relied on to show that the award or amendment of the award provides for equal remuneration for men and women employees for work of equal or comparable value.

132 Exemptions

(1) An application under section 132⁸⁸ of the Act must be in the non-chapter 12 approved form.

(2) An affidavit contained in or accompanying the application must state the facts relied on to show that the exemption—

- (a) is in the best interests of the employees and employers concerned; and
- (b) is not contrary to the public interest.

86 Section 117 (Who may apply) of the Act

87 Section 125 (Making, amending and repealing awards) of the Act

88 Section 132 (Exemptions) of the Act

PART 10—CERTIFIED AGREEMENTS

133 Advice of intention to begin negotiations for a project agreement

Written advice under section 143(2)(b)⁸⁹ of the Act must be filed in the approved form before negotiations start.

134 Application for certificate as to requested representation

(1) An application under section 152(1) or (2)⁹⁰ of the Act in relation to a proposed certified agreement must—

- (a) be made before the agreement is made; and
- (b) be in the approved form.

(2) An affidavit contained in or accompanying an application under section 152(1) of the Act by an employee organisation in relation to a proposed certified agreement must—

- (a) state—
 - (i) the name, address and membership number of each employee who has requested the organisation to represent the employee in negotiating with the employer about the proposed agreement; and
 - (ii) the date of the request; and
 - (iii) the calling of each employee; and
 - (iv) the name of the proposed agreement; and
- (b) if the request is written—attach a copy of the request.

(3) An applicant under section 152(1) of the Act must not serve an affidavit under subrule (2) on the employer.

(4) An affidavit contained in or accompanying an application under section 152(2) of the Act by an employer in relation to an employee organisation and a proposed certified agreement must state the following—

89 Section 143 (Proposed parties to be advised when agreement is proposed) of the Act

90 Section 152 (Certificate as to requested representation) of the Act

- (a) the name and address of each employee who has withdrawn a request for the organisation to represent the employee in negotiating with the employer about the proposed agreement;
- (b) the date of the withdrawal;
- (c) the name and address of each employee (a “**former relevant employee**”) who—
 - (i) has requested the organisation to represent the employee in negotiating with the employer about the proposed agreement; and
 - (ii) stopped being a relevant employee after the request;
- (d) how the former relevant employee stopped being a relevant employee.

Examples of paragraph (d)—

- the former relevant employee has stopped being employed by the employer
- the former relevant employee has been promoted to a position in which his or her employment is not subject to the proposed agreement.

(5) A certificate under section 152(1) or (2) of the Act must be in the approved form.

135 Notice of giving of authorisation of industrial action

A notice under section 177(1)(c)⁹¹ of the Act must be in the approved form.

136 Request for help to make certified agreement

For section 148(1)(a)⁹² of the Act, a request to the commission for help to make a certified agreement must be made in the approved form.

91 Section 177 (Industrial action must be properly authorised) of the Act

92 Section 148 (Assistance in negotiating by conciliation) of the Act

137 Request for arbitration

For section 149(1)(c)⁹³ of the Act, a request for the commission to determine a matter by arbitration must—

- (a) be in the non-chapter 12 approved form; and
- (b) state that all the negotiating parties consider that conciliation has been unsuccessful; and
- (c) contain a form of consent to arbitration signed by all the negotiating parties.

138 Application for decision about designated award

An application under section 163(2)⁹⁴ of the Act in relation to a proposed certified agreement must—

- (a) be in the approved form; and
- (b) nominate an award (regulating employment conditions of employees engaged in a similar kind of work as the person under the proposed agreement) that the applicant considers is appropriate for deciding whether the agreement passes the no-disadvantage test.

139 Application for certification

(1) An application for certification of an agreement must—

- (a) be in the approved form; and
- (b) be signed by or for the applicant; and
- (c) be accompanied by the original and 2 copies of the proposed certified agreement;⁹⁵ and
- (d) if there is or was a certified agreement or agreements covering some or all of the employees to be covered by the agreement, state—

93 Section 149 (Arbitration if conciliation unsuccessful) of the Act

94 Section 163 (Deciding designated awards) of the Act

95 For the form of an affidavit to accompany an agreement, see the regulation, section 9 (Agreement for certification to be accompanied by affidavit—Act, s 156).

- (i) the name and agreement number of the certified agreement or agreements; and
- (ii) whether the new certified agreement replaces the existing agreement or agreements.

(2) If the applicant wants a copy of the filed agreement returned, the applicant must give an extra copy to the registrar.

140 Form of agreement for certification

An agreement filed with an application for certification of an agreement must—

- (a) be on A4 (210 mm x 297 mm) paper; and
- (b) be on 1 side of the page only; and
- (c) be in Times New Roman font; and
- (d) be in 10 point font size; and
- (e) have only fully justified text; and
- (f) have a 2 cm margin on each side; and
- (g) have a 1.25 cm wide header, containing only the page number, in the centre of the page; and
- (h) not contain a logo or other embellishment; and
- (i) be accompanied by an identical copy of the agreement on computer disk.

141 Application to extend certified agreement

(1) For section 168⁹⁶ of the Act, an application to extend the nominal expiry date of a certified agreement must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

- (a) the steps taken to satisfy the commission as required by section 168(4) of the Act; and

96 Section 168 (Extending a certified agreement) of the Act

- (b) the steps taken to ensure that section 185⁹⁷ of the Act has not been contravened; and
- (c) that a valid majority of the relevant employees at the time approve the extension.

(3) The applicant must give the registrar the original and 2 copies of the application and affidavit for filing.

(4) If the applicant wants a copy of the filed application returned, the applicant must give an extra copy to the registrar.

142 Application to amend certified agreement

(1) An application for approval of an amendment of a certified agreement under section 169⁹⁸ of the Act must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

- (a) the name of the relevant or designated award; and
- (b) the nominal expiry date of the amended certified agreement; and
- (c) the steps taken to ensure—
 - (i) the commission is satisfied as required by section 169(3)(a) of the Act; and
 - (ii) section 185⁹⁹ of the Act has not been contravened; and
- (d) where the procedures for preventing and settling disputes can be found in the agreement; and
- (e) the names of the persons who negotiated the amendment and the persons for whom they acted.

(3) The applicant must give the registrar the original and 2 copies of the application, amendment and affidavit for filing.

(4) If the applicant wants a copy of the filed application and amendment returned, the applicant must give an extra copy to the registrar.

97 Section 185 (Coercion of persons to make, amend or terminate certified agreements etc.) of the Act

98 Section 169 (Amending a certified agreement) of the Act

99 Section 185 (Coercion of persons to make, amend or terminate certified agreements etc.) of the Act

(5) For an application to which section 170(2)¹⁰⁰ of the Act applies, the affidavit accompanying the application must have a copy of the request under section 170(1)(a) of the Act for an amendment from 1 or more employees to the employer attached as an exhibit to the affidavit.

143 Determination made under Act, s 149

(1) For section 150(5)¹⁰¹ of the Act, a notice of revocation of a determination under section 149¹⁰² of the Act must be in the approved form.

(2) The notice must be accompanied by an affidavit by the employer, or an organisation, bound by the determination or a representative of a majority of the employees to whom the determination applies stating—

- (a) the nominal expiry date of the determination; and
- (b) the day from which the determination is revoked; and
- (c) that the notice has been given to all of the employees, or other employees to whom the determination applies and the persons, or other persons, who are bound by the determination.

144 Notice terminating certified agreement on or before its nominal expiry date and application for approval of termination

(1) A notice under section 172(1)¹⁰³ of the Act must be in the approved form.

(2) An application for approval under section 172(2) of the Act of the termination of a certified agreement must be in the approved form.

(3) The application must be accompanied by an affidavit stating that a valid majority of the relevant employees at the time approve of the agreement's termination.

100 Section 170 (Amendment if discrimination between unionists and non-unionists) of the Act

101 Section 150 (Determinations made under s 149) of the Act

102 Section 149 (Arbitration if conciliation unsuccessful) of the Act

103 Section 172 (Terminating certified agreement on or before its nominal expiry date) of the Act

144A Notice of intention to terminate certified agreement after its nominal expiry date and application to terminate

(1) An application for approval under section 173(1)¹⁰⁴ of the Act of the termination of a certified agreement must be in the approved form.

(2) A notice under section 173(2) of the Act must be in the approved form.

PART 11—QUEENSLAND WORKPLACE AGREEMENTS**145 Application for decision about designated award**

An application under section 212(2)¹⁰⁵ of the Act in relation to a proposed QWA must—

- (a) be in the approved form; and
- (b) nominate the award (regulating employment conditions of employees engaged in a similar kind of work as the person under the QWA) that the applicant considers is appropriate for deciding whether the QWA passes the no-disadvantage test.

146 Requirements for QWA and ancillary documents

(1) A QWA must be—

- (a) in the approved form;¹⁰⁶ and
- (b) accompanied by—
 - (i) employer details in the approved form completed by the employer; and
 - (ii) employee details in the approved form for each employee who made the agreement, completed by the employer.

104 Section 173 (Terminating agreement after its nominal expiry date) of the Act

105 Section 212 (Deciding designated awards) of the Act

106 For further requirements about QWAs see the regulation, part 5 (Queensland workplace agreements).

(2) Each of the following ancillary documents must be in the approved form—

- (a) an amendment agreement;
- (b) an extension agreement;
- (c) a termination agreement;
- (d) a termination notice.

(3) A QWA, whether or not it replaces another QWA, must be signed by all parties to it.¹⁰⁷

(4) The person filing a QWA or ancillary document must give the registrar the original and 1 copy of the document for filing.

147 Filing QWA or ancillary document by fax

(1) A QWA, ancillary document or a document accompanying the QWA or ancillary document may be filed by fax.

(2) However, the original of each document must be sent immediately to the registry or office of the chief inspector to which they were faxed.

148 Application for injunction

An application under section 221¹⁰⁸ of the Act must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the facts it is alleged constitute the contravention, or anticipated contravention, of chapter 6, part 2¹⁰⁹ of the Act.

107 Certain persons can not witness a party's signature on a QWA or ancillary document. See the regulation, section 15 (Witnessing signatures on QWA or ancillary document—Act, s 709(2)(d)).

108 Section 221 (Injunctions) of the Act

109 Chapter 6 (Agreements), part 2 (Queensland workplace agreements) of the Act

PART 12—INDUSTRIAL DISPUTES

149 Notice of industrial dispute

(1) A notice under section 229(2)¹¹⁰ of the Act must be in the approved form and state—

- (a) the issues involved; and
- (b) the name, phone number and fax number (if any) of the contact person for each party to the dispute; and
- (c) the industrial instruments affected; and
- (d) whether the party giving the notice is requesting that the commission hold a conference; and
- (e) whether any dispute settling procedures apply and have been followed.

(2) Immediately after giving the notice, the party giving the notice must serve a copy of the notice on all other parties to the dispute.

(3) Rules 11 and 12¹¹¹ do not apply to the notice.

150 Applications for order for contravention of Act, s 238

(1) An application for an order under section 239¹¹² of the Act must be in the non-chapter 12 approved form.

(2) An affidavit contained in or accompanying the application must state the facts it is alleged constitute a contravention of section 238¹¹³ of the Act.

151 Mediation by commission

(1) The steps the commission may take as mediator in an industrial cause include conferring with the parties to the cause to the extent necessary—

- (a) to help the parties resolve the dispute; or

110 Section 229 (Notice of industrial dispute) of the Act

111 Rules 11 (Document starting proceedings to state address and phone and fax number) and 12 (General requirements for documents for filing)

112 Section 239 (Orders the commission may make) of the Act

113 Section 238 (Payments for strikes can not be compelled) of the Act

- (b) to ensure all avenues of resolution have been explored before proceeding to arbitration; or
 - (c) to facilitate the conduct of any necessary arbitration proceedings by exploring ways of effectively conducting hearings; or
 - (d) to help the parties resolve any other outstanding issues.
- (2) The commission may resolve other outstanding issues only if—
- (a) the commission considers the mediation is desirable in the public interest; and
 - (b) all parties to the cause—
 - (i) consent; and
 - (ii) agree on the specific issues to be dealt with in the consultation process; and
 - (iii) agree to accept any resolution achieved by the process, including consenting to any formal orders.
- (3) The commission may direct a record be taken of the mediation.
- (4) The consent of a party to the commission resolving other outstanding issues can not be withdrawn other than with the leave of the commission.
- (5) The outcome of the mediation—
- (a) may be incorporated in the record or issued separately in writing; and
 - (b) may be given effect by—
 - (i) an order of the commission; or
 - (ii) another way the commission considers appropriate.
- (6) The commission may stop acting under this rule at any time.
- (7) This rule does not limit the jurisdiction of, or the obligations placed on, the commission by chapter 7, part 2¹¹⁴ of the Act.

114 Chapter 7 (Industrial disputes), part 2 (Action for settling industrial disputes) of the Act

152 Notice to show cause

A notice under section 233(7)¹¹⁵ of the Act must be in the approved form.

PART 13—RECORDS AND WAGES**153 Application for issue of an authority**

(1) An application for an authority under section 364¹¹⁶ of the Act must be in the approved form.

(2) Only 1 copy of the application need be filed.

(3) A separate application must be filed for each person to be authorised.

**PART 13A—APPLICATION FOR ORDER FOR
REPAYMENT OF FEE RECEIVED BY PRIVATE
EMPLOYMENT AGENT****153A Application for order for repayment of fee**

An application under section 408F(1)¹¹⁷ of the Act must—

(a) be in the approved form; and

115 Section 233 (Enforcing commission's orders) of the Act

116 Section 364 (Authorising industrial officers) of the Act

117 Section 408F (Commission may order repayment of fees received by private employment agent) of the Act

- (b) state the facts it is alleged constitute the contravention of section 408D(1) or (2)¹¹⁸ of the Act.

PART 13B—APPLICATION FOR ORDER ON CONTRAVENTION OF ELECTRICAL SAFETY UNDERTAKING

153B Application for order under Electrical Safety Act 2002, s 54

(1) An application for an order under the *Electrical Safety Act 2002*, section 54(2)¹¹⁹ in relation to an electrical safety undertaking must—

- (a) be in the approved form; and
- (b) state the facts it is alleged constitute the contravention of the undertaking; and
- (c) state whether the identified person for the undertaking is being prosecuted for the offence of contravening the undertaking.

(2) In this rule—

“**electrical safety undertaking**” see the *Electrical Safety Act 2002*, schedule 2.

“**identified person**”, for an electrical safety undertaking, see the *Electrical Safety Act 2002*, schedule 2.

118 Section 408D (When fees are or are not payable to private employment agent) of the Act

119 *Electrical Safety Act 2002*, section 54 (Contravention of electrical safety undertaking)

PART 13C—APPLICATION FOR ORDER ON CONTRAVENTION OF WORKPLACE HEALTH AND SAFETY UNDERTAKING

153C Application for order under Workplace Health and Safety Act 1995, s 42I

(1) An application for an order under the *Workplace Health and Safety Act 1995*, section 42I(2)¹²⁰ in relation to a workplace health and safety undertaking must—

- (a) be in the approved form; and
- (b) state the facts it is alleged constitute the contravention of the undertaking; and
- (c) state whether the identified person for the undertaking is being prosecuted for the offence of contravening the undertaking.

(2) In this rule—

“**identified person**”, for a workplace health and safety undertaking, see the *Workplace Health and Safety Act 1995*, schedule 3.

“**workplace health and safety undertaking**” see the *Workplace Health and Safety Act 1995*, schedule 3.

PART 14—INDUSTRIAL ORGANISATIONS

Division 1—Registration

154 Applications for registration

Each of the following applications must be in the chapter 12 approved form—

120 *Workplace Health and Safety Act 1995*, section 42I (Contravention of workplace health and safety undertaking)

- (a) an application for registration as an employee organisation under section 414(1)¹²¹ of the Act;
- (b) an application for registration as an employer organisation under section 414(1) of the Act;
- (c) an application for registration as an employer organisation under section 414(2) of the Act by a corporation.

155 Notice of objection to registration application

For section 418¹²² of the Act, notice of objection to an application for registration as an organisation must be in the approved form.¹²³

156 Answering objections

A written response by an applicant to an objection to an application for registration must be filed in the approved form.¹²⁴

Division 2—Change of callings

157 Application to change callings

An application to change the list of callings of an organisation under section 427¹²⁵ of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) state that the existing rules of the organisation have been complied with in making the application and the change; and
- (c) show how the change was proposed and approved in accordance with the organisation's rules; and
- (d) describe the nature and effect of the change; and

121 Section 414 (Who may apply) of the Act

122 Section 418 (Right to object) of the Act

123 See also the regulation, section 28 (Notice of objection).

124 See also the regulation, section 29 (Answering objections—Act s 654).

125 Section 427 (Change of callings) of the Act

- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application; and
- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the change.¹²⁶

Division 3—Election rules

Subdivision 1—Ballot not to be postal ballot

158 Application for approval for a ballot not to be a postal ballot

(1) For section 447(1)¹²⁷ of the Act, an application to the registrar for approval for a ballot not to be a postal ballot must be in the chapter 12 approved form.

(2) The application must also—

- (a) contain particulars of the proposed amendment to the organisation's rules to provide for a secret ballot that is not a postal ballot; and
- (b) state that the proposed amendment of the rules are not contrary to the Act or to law; and
- (c) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (d) give details of how it is believed taking a ballot under the proposed rules will be likely to result in a higher participation by the members in the ballot than would result from a postal ballot; and
- (e) give details of how it is believed taking a ballot under the proposed rules will give members eligible to vote an adequate opportunity to vote without intimidation; and

126 See also the regulation sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

127 Section 447 (Approval application) of the Act

- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment.¹²⁸

159 Application for cancellation of approval

For section 450(a)¹²⁹ of the Act, an application by an organisation to cancel an approval for a ballot to decide the result of its elections for its officers not to be a postal ballot must be in the chapter 12 approved form.

Subdivision 2—Validity of, or compliance with, rules

160 Application about validity of, or compliance with, rules

An application under section 459(1)¹³⁰ of the Act must be in the chapter 12 approved form.

Subdivision 3—Changing names and other amendments

161 Application for approval to amend name under Act, s 472

An application for an order under section 472¹³¹ of the Act must be in the chapter 12 approved form.

162 Application for approval to amend name under Act, s 473

An application for an order under section 473¹³² of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) describe the nature and effect of the amendment; and

128 See also the regulation, section 19 (Applications to industrial tribunal).

129 Section 450 (Cancellation of approval) of the Act

130 Section 459 (Powers of court) of the Act

131 Section 472 (Approval to change 'union' to 'organisation' in name) of the Act

132 Section 473 (Approval for other name amendment) of the Act

- (d) state that the new name is not the same as another organisations's name or so similar to the name of another organisation so as to be likely to cause confusion; and
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application; and
- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment.¹³³

163 Application to approve eligibility rule amendment

(1) An application for an order under section 474¹³⁴ of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) describe the nature and effect of the amendment; and
- (d) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment; and
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application.¹³⁵

(2) The application must have attached a schedule divided into 3 columns containing—

- (a) the present registered rule in column 1; and
- (b) an exact description of the amendment sought detailing the words or paragraphs to be deleted or inserted and including any consequential amendments, for example, renumbering, in column 2; and
- (c) the proposed new rule incorporating the amendment detailed in column 2 in column 3.

133 See also the regulation, sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

134 Section 474 (Approval for eligibility rule amendment) of the Act

135 See also the regulation, sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

164 Application for approval of other amendment to rules

An application for the registrar's approval under section 478¹³⁶ of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) state how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) state that the amendment does not contravene the Act, another law or an industrial instrument; and
- (d) have attached a schedule divided into 3 columns containing—
 - (i) the present registered rule in column 1; and
 - (ii) an exact description of the amendment sought detailing the words or paragraphs to be deleted or inserted and including any consequential amendments, for example, renumbering, in column 2; and
 - (iii) the proposed new rule incorporating the amendment detailed in column 2 in column 3; and
- (e) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment; and
- (f) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application.

165 Notice of objection to particular decisions and response to objection

(1) A notice of objection under section 27(5)¹³⁷ of the regulation must be in the approved form.

(2) A response under section 29¹³⁸ of the regulation to an objection must be in the approved form.

136 Section 478 (When amendment may be made) of the Act

137 Section 27 (Who may object—Act, s 654) of the regulation

138 Section 29 (Answering objections—Act, s 654) of the regulation

Subdivision 4—Election inquiry**166 Application for election inquiry**

An application for an election inquiry under chapter 12, part 8¹³⁹ of the Act must—

- (a) be in the approved form; and
- (b) state that the applicant is a financial member of the organisation or was a financial member of the organisation within 1 year before the application was made; and
- (c) state the date the prescribed information for the election was filed under section 481¹⁴⁰ of the Act; and
- (d) if the election has ended—state the date the election ended.

Subdivision 5—Officers register**167 Officers register**

The copy of the officers register required to be filed under section 547¹⁴¹ of the Act before 31 March in each year must—

- (a) be in the approved form; and
- (b) contain details of all officers¹⁴² of the organisation and its branches.

139 Chapter 12 (Industrial organisations), part 8 (Election inquiries) of the Act

140 Section 481 (Organisation or branch must file prescribed election information) of the Act

141 Section 547 (Annual obligation to file officers register) of the Act

142 For the meaning of “officer” see the Act, section 409 (Definitions for ch 12).

Division 4—Exemptions**168 Application for exemption if federal ballot held**

An application under section 580¹⁴³ of the Act for an exemption from holding an election for a stated office or offices must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of any report or certificate required under the Commonwealth Act for the applicant's counterpart federal body's election that the application is about, certified by the president or secretary of the body as being a true copy.¹⁴⁴

169 Application for exemption from keeping members or officers register

An application under section 582¹⁴⁵ of the Act for an exemption from keeping a register must be in the chapter 12 approved form.

170 Application for exemption from accounting or audit provisions

(1) An application under section 586¹⁴⁶ of the Act for an exemption must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of the most recent report, accounts, statements and other documents lodged, under the continued section 280 of the Commonwealth Act, for the applicant's counterpart federal body, certified by the president or secretary of the counterpart federal body as being a true copy; and
- (c) be accompanied by a copy of a letter from the registry of the Australian Commission to the applicant's counterpart federal body acknowledging the filing of the documents in the registry of the Australian Commission; and

143 Section 580 (Exemption if federal election held) of the Act

144 See also the regulation, section 22 (Application for exemption under Act, s 580).

145 Section 582 (Exemption) of the Act

146 Section 586 (Who may apply) of the Act

- (d) state that the applicant's counterpart federal body is not a body for which a certificate has been issued under the continued section 285 of the Commonwealth Act.

(2) In this rule—

“continued section 280 of the Commonwealth Act” means the Commonwealth Act, section 280¹⁴⁷ as continued by the transitional provision.

“continued section 285 of the Commonwealth Act” means the Commonwealth Act, section 285¹⁴⁸ as continued by the transitional provision.

“transitional provision” means the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002* (Cwlth) schedule 1, section 47.¹⁴⁹

171 Application for exemption from accounting or audit obligations for an employer organisation that is a corporation

(1) An application under section 590¹⁵⁰ of the Act for an exemption must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of the most recent financial report, director's report and auditor's report lodged by the applicant under the Corporations Act or another law that imposes accounting and audit obligations on the organisation.

(2) Each copy must be certified by the applicant's president or secretary as a true copy of the most recent financial report, director's report or auditor's report lodged by the applicant under the Corporations Act or another stated law.

147 Commonwealth Act, section 280 (Reports etc. to be lodged in Industrial Registry)

148 Commonwealth Act, section 285 (Accounts and audit where income of organisation less than certain amount)

149 *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*, schedule 1 (Transitional provisions) section 47 (Accounts and audit—continued application of division 11 of part IX of WR Act)

150 Section 590 (Who may apply) of the Act

172 Application for exemption from requirement that electoral commission conduct election

An application under section 594¹⁵¹ of the Act for an exemption must be in the chapter 12 approved form.

Division 5—Amalgamations***Subdivision 1—Procedures for amalgamation*****173 Application to submit proposed amalgamation to a ballot**

An application to submit a proposed amalgamation to a ballot must be in the chapter 12 approved form.¹⁵²

174 Notice of objection about amalgamations involving extending eligibility rules

A notice of objection to an application under the regulation, section 64 must be in the approved form.¹⁵³

175 Application to submit proposed withdrawal to a ballot

An application to submit a proposed withdrawal to a ballot must be in the chapter 12 approved form.¹⁵⁴

151 Section 594 (Who may apply) of the Act

152 See also the regulation, section 64 (Application to submit proposed amalgamation to a ballot).

153 See also the regulation, sections 76 (Objections about amalgamations involving extending eligibility rules) and 79 (Notice of objection).

154 See also the regulation, section 65 (Application to submit proposed withdrawal to a ballot).

176 Application for exemption—number of members

An application by a proposed amalgamated organisation for an exemption from the requirement to hold a ballot for the amalgamation must be in the chapter 12 approved form.¹⁵⁵

177 Application for amalgamation ballot exemption—recognising federal ballot

An application for an exemption from the requirement to hold a ballot if the counterpart federal bodies of the organisations proposing to amalgamate have amalgamated must be in the chapter 12 approved form.¹⁵⁶

178 Notice of objection to amalgamation ballot exemption—recognising federal ballot

A notice of objection to an amalgamation ballot exemption under the regulation, section 67 must be in the approved form.¹⁵⁷

179 Application for an exemption from holding a withdrawal ballot—recognising federal ballot

An application for an exemption from the requirement to hold a withdrawal ballot must be in the chapter 12 approved form.¹⁵⁸

180 Notice of objection to withdrawal ballot exemption—recognising federal ballot

A notice of objection to an application for a withdrawal ballot exemption under the regulation, section 68 must be in the approved form.¹⁵⁹

155 See also the regulation, section 66 (Amalgamation ballot exemption—number of members).

156 See also the regulation, section 67 (Amalgamation ballot exemption—recognising federal ballot).

157 See also the regulation, sections 77 (Objection to amalgamation ballot exemption—recognising federal ballot) and 79 (Notice of objection).

158 See also the regulation, section 68 (Withdrawal ballot exemption—recognising federal ballot).

159 See also the regulation, sections 78 (Objection to withdrawal ballot exemption—recognising federal ballot) and 79 (Notice of objection).

181 Answering objections

A statement in answer to a notice of objection under the regulation, section 79 must be in the approved form.¹⁶⁰

182 Application for approval for amalgamation ballot that is not a postal ballot

An application for approval for an amalgamation ballot that is not a postal ballot must be in the approved form.¹⁶¹

183 Application for approval for withdrawal from amalgamation ballot that is not a postal ballot

An application for approval for a withdrawal ballot that is not a postal ballot must be in the approved form.¹⁶²

184 Notice of withdrawal

A notice of withdrawal filed under the regulation, section 56(1), 64(1), 65(1), 66(1), 67(2), 68(2) or 69 must be in the approved form.¹⁶³

Subdivision 2—Form of ballot papers**185 Form of ballot paper for amalgamation if alternative scheme**

A ballot paper for a ballot on a proposed amalgamation for which there is an alternative scheme must be in the approved form.

160 See also the regulation, section 80 (Answering objection).

161 See also the regulation, section 69 (Application for alternative ballot).

162 See also the regulation, section 69 (Application for alternative ballot).

163 The regulation, section 56 (Community of interest declaration for amalgamation), 64 (Application to submit proposed amalgamation to a ballot), 65 (Application to submit proposed withdrawal to a ballot), 66 (Amalgamation ballot exemption—number of members), 67 (Amalgamation ballot exemption—recognising federal ballot), 68 (Withdrawal ballot exemption—recognising federal ballot) or 69 (Application for alternative ballot).

186 Form of ballot paper for amalgamation if no alternative scheme

A ballot paper for a ballot on a proposed amalgamation for which there is no alternative scheme must be in the approved form.

187 Form of ballot paper for withdrawal from amalgamation

A ballot paper for a ballot on a proposed withdrawal must be in the approved form.

*Subdivision 3—Amalgamation or withdrawal ballot irregularities***188 Application for a ballot inquiry**

An application for a ballot inquiry for a claimed irregularity in an amalgamation or withdrawal ballot must be in the approved form.¹⁶⁴

*Division 6—Deregistration***189 Application for deregistration**

An application under section 639(1) or (4)¹⁶⁵ of the Act for deregistration of an organisation must be in the chapter 12 approved form.

*Division 7—Statistical information***190 Statistical information**

(1) The Court, commission or registrar may require an organisation to file returns of statistical information or other statistical information with the registrar.

(2) The requirement may be made in the way the Court, commission or registrar considers appropriate.

164 See also the regulation, section 125 (Requirements for application).

165 Section 639 (Who may bring deregistration proceedings) of the Act

(3) The returns or other statistical information must be filed within 30 days of the requirement.

PART 15—INDUSTRIAL AGREEMENTS

191 Notice of intention to retire from agreement

(1) A notice, under section 142¹⁶⁶ of the 1990 Act, signifying an intention to retire from an industrial agreement must—

- (a) be in the approved form; and
- (b) be filed; and
- (c) specify the period, at least 30 days from the date of filing, at the end of which the party intends to retire.

(2) A copy of the notice must be forwarded, by any method of service allowed under these rules, to each of the original parties and any later parties to the agreement, directed to their usual or last known address.

PART 16—FEES

192 Fees in the court, commission or registry

The fees payable in the court, commission or registry are in schedule 1.

193 Fees in Industrial Magistrates Court

The fee for any of the following in an industrial magistrates court is the fee, if any, that is payable for a similar process under the *Justices Act 1886*—

¹⁶⁶ Repealed *Industrial Relations Act 1990*, section 142 (Retirement of parties from agreement). For the saving provision see the *Industrial Relations Act 1999*, section 713(2).

- (a) a complaint, claim under rule 90,¹⁶⁷ summons or other process under the *Justices Act 1886*; or
- (b) a proceeding for—
 - (i) an offence against the *Pastoral Workers' Accommodation Act 1980*; or
 - (ii) an offence against the *Workers' Accommodation Act 1952*; or
 - (iii) an offence against the *Workplace Health and Safety Act 1995*.

PART 17—MISCELLANEOUS

194 Effect of failure to comply with rules

(1) A failure to comply with these rules is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding, a nullity.

(2) If there has been a failure to comply with these rules, the court, commission, registrar or an industrial magistrate may—

- (a) set aside all or part of the proceeding; or
- (b) set aside a step taken in the proceeding or order made in the proceeding; or
- (c) declare a document or step taken to be ineffectual; or
- (d) declare a document or step taken to be effectual; or
- (e) make another order that could be made under these rules; or
- (f) make another order dealing with the proceeding generally as the court, commission, registrar or an industrial magistrate considers appropriate.

167 Rule 90 (Application of div 1)

195 Form of notices

(1) A notice required or permitted under these rules must be in writing, unless the court, commission, industrial magistrate or registrar gives leave for notice to be given orally.

(2) Subrule (1), does not prevent the commission giving an attendance notice under section 232(2)¹⁶⁸ of the Act orally.

197 Searching and copying documents

(1) If a person is not a party to, or bound by, a proceeding, the person may not search the documents in the proceeding without the registrar's prior approval.

(2) If the registrar approves, a person may obtain a certified copy of a document filed with the registrar.

(3) The registrar may require at least 7 days notice to produce the certified copy.

198 Student's work permit

(1) An application for a permit under section 695¹⁶⁹ of the Act must be in the approved form.

(2) Only 1 copy of the application need be filed.

(3) A student's work permit must—

(a) be in the approved form; and

(b) state any conditions to which the permit is subject.

199 Aged or infirm person's permit

(1) Each of the following must be in the approved form—

(a) an application for a permit under section 696¹⁷⁰ of the Act;

(b) a notice of hearing of the application;

168 Section 232 (Compulsory conference) of the Act

169 Section 695 (Student's work permit) of the Act

170 Section 696 (Aged or infirm persons permits) of the Act

(c) an aged or infirm person's permit.

(2) An application under section 696(6) of the Act to cancel a permit must be in the non-chapter 12 approved form.

200 Continuation of proceeding after 6 months delay

(1) This rule applies if—

- (a) an application starting a proceeding has been filed; and
- (b) no action has been taken for 6 months since the last action was taken in the application.

(2) Unless the court, commission or registrar decides otherwise, if a party wishes to take action after the end of the 6 months, the party must first give every other party 1 month's notice of intention to take action.

200A Lapse of proceeding after at least 1 year's delay

(1) This rule applies if—

- (a) an application starting a proceeding has been filed; and
- (b) no action has been taken for at least 1 year since the last action was taken in the application.

(2) A party may only take further action in the application with an order of the court, commission or registrar.

(3) An application for an order under subrule (2) must—

- (a) be in the approved form; and
- (b) state the steps taken in the proceeding; and
- (c) explain the circumstances of the delay; and
- (d) state the steps (including a timetable) proposed to be taken to progress the proceeding; and
- (e) state any prejudice suffered or likely to be suffered by another party to the proceeding if the application is not struck out; and
- (f) state the merits of the proceeding; and
- (g) state why the court, commission or registrar should make the order despite the delay.

201 Striking out proceeding after at least 1 year's delay

(1) This rule applies if—

- (a) an application starting a proceeding has been filed; and
- (b) no action has been taken for at least 1 year since the last action was taken in the application.

(2) The registrar may, by written notice, require the applicant to show cause in writing, within 21 days after the day the notice is given, why the application should not be struck out.

(3) The notice must state a warning that if the applicant does not show cause within the time stated in the notice, the application may be struck out.

(4) The applicant's response to the notice to show cause must—

- (a) state the steps taken in the proceeding; and
- (b) explain the circumstances of the delay; and
- (c) state the steps (including a timetable) proposed to be taken to progress the proceeding; and
- (d) state any prejudice suffered or likely to be suffered by another party to the proceeding if the application is not struck out; and
- (e) state the merits of the proceeding; and
- (f) state why the court, commission or registrar should not strike out the application despite the delay.

(5) After considering any response by the applicant to the notice to show cause, the registrar may do 1 of the following—

- (a) strike out the application;
- (b) list the matter of showing cause for hearing, with or without directions, before—
 - (i) if the application is to be decided by the court—the court; or
 - (ii) if the application is to be decided by the commission—the commission; or
 - (iii) if the application is to be decided by the registrar—the registrar;
- (c) list the application for hearing, with or without directions;

(d) make another order dealing with the application the registrar considers appropriate.

(6) On a hearing of the matter of showing cause the court, commission or registrar may do 1 of the following—

- (a) strike out the application;
- (b) list the application for hearing, with or without directions;
- (c) make another order dealing with the application the court, commission or registrar considers appropriate.

(7) The striking out by the court, commission or registrar of the application also disposes of any other application in the proceeding that has not been disposed of, other than in relation to costs.

(8) If the application is struck out, the registrar must give the parties written notice that the court, commission or registrar has struck out the application.

201A Vacations and holidays

(1) The vacations and holidays of the court and commission are the same as the Supreme Court at Brisbane but may be rearranged by approval of the vice president.

(2) However, the court or commission may deal with business arising during a vacation, if the court or commission considers it necessary.

PART 18—TRANSITIONAL

202 Continuance of proceedings and appointments

(1) A proceeding or appointment under the Act commenced or made before the commencement of these rules continues.

(2) Action may be taken in relation to the proceeding or appointment as if they were commenced under these rules.

(3) In this rule—

“appointment” means an appointment of an agent.

**203 Transitional provision for Industrial Relations (Tribunals)
Amendment Rule (No. 2) 2003**

(1) For an appeal mentioned in the old rule 109 started before the commencement of this rule, the record for the appeal under the old rule 109 is taken to be the record for the appeal under rule 109.

(2) An application for an order under the old rule 201(2) that has not been decided before the commencement of this rule must be decided as if the old rule 201(2) and (3) were still in force.

(3) Subrule (4) applies if the registrar has required an applicant to show cause under the old rule 201(4) and no action has been taken under the old rule 201(7) for the application.

(4) The requirement continues and must be dealt with as if the old rule 201(6) to (8) were still in force.

(5) In this rule—

“**old rule 109**” means rule 109¹⁷¹ as in force immediately before the commencement of this rule.

“**old rule 201**” means rule 201¹⁷² as in force immediately before the commencement of this rule.

171 Old rule 109 (Record for appeal)

172 Old rule 201 (Lapse of proceedings after 1 year's delay)

SCHEDULE 1**FEES IN THE COURT, COMMISSION OR REGISTRY**

	rule 192
	\$
1. Filing—	
(a) an application for reinstatement made by an employee.....	37.00
(b) an application made by a party or inspector to amend or declare void a contract, or part of a contract	37.00
(c) an application for directions relating to an application mentioned in paragraph (a) or (b)	12.50
2. Searching for, or inspecting, a document	3.70
3. Photocopying, for each page	0.30

SCHEDULE 2**DICTIONARY**

rule 3

“application to appeal” see rule 114.

“association” includes an organisation that is not an employee or employer organisation.

“chapter 12 approved form” means a form approved under section 708¹⁷³ of the Act for use for applications under chapter 12¹⁷⁴ of the Act.

“commission” includes the full bench.

“council” means the Training and Employment Recognition Council established under the *Vocational Education, Training and Employment Act 2000*, section 167.

“filed” means—

- (a) for a QWA—filed with the registrar or chief inspector; or
- (b) for an application to appeal from a decision of an industrial magistrate—filed under rule 119;¹⁷⁵ or
- (b) otherwise—filed with the registrar.

“leave to appeal” means leave under section 342¹⁷⁶ of the Act.

“non-chapter 12 approved form” means a form approved under section 708 of the Act for use for applications other than under chapter 12 of the Act.

“regulation” means the *Industrial Relations Regulation 2000*.

“safety Act provision” means—

173 Section 708 (Approved forms) of the Act

174 Chapter 12 (Industrial organisations) of the Act

175 Rule 119 (Filing and service of application to appeal)

176 Section 342 (Appeal from commission, magistrate or registrar) of the Act

SCHEDULE 2 (continued)

(a) the *Electrical Safety Act 2002*, section 172 or 173;¹⁷⁷ or

(b) the *Workplace Health and Safety Act 1995*, section 152 or 153.¹⁷⁸

“stay of a decision under appeal” see rule 110(1).

177 *Electrical Safety Act 2002*, section 172 (Appeal) or 173 (How to start appeal)

178 *Workplace Health and Safety Act 1995*, section 152 (Who may appeal?) or 153 (How to start appeal)

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2004. Future amendments of the Industrial Relations (Tribunals) Rules 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	1 January 2001	19 January 2001
1A	to 2001 SL No. 296	1 January 2002	11 January 2002
1B	to 2001 SL No. 296	1 May 2002	3 May 2002
			(Column discontinued)
			Notes
1C	to 2002 SL No. 175	1 July 2002	
1D	to 2003 SL No. 151	27 June 2003	
1E	to 2003 SL No. 320	8 December 2003	
1F	to 2003 SL No. 320	1 January 2004	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Industrial Relations (Tribunals) Rules 2000 SL No. 329

made by the Governor in Council on 14 December 2000

notfd gaz 15 December 2000 pp 1478–83

rr 1–2 commenced on date of notification

remaining provisions commenced 1 January 2001 (see r 2)

exp 1 September 2011 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

Industrial Relations (Tribunals) Amendment Rule (No. 1) 2001 SL No. 108

notfd gaz 13 July 2001 pp 1041–2

rr 1–2 commenced on date of notification

remaining provisions commenced 13 July 2001 (see r 2)

Industrial Relations (Tribunals) Amendment Rule (No. 2) 2001 SL No. 296

notfd gaz 21 December 2001 pp 1482–8
 r 6 commenced 1 May 2002 (see r 2(1))
 rr 4–5, 7–8 commenced 1 January 2002 (see r 2(2))
 remaining provisions commenced on date of notification

Industrial Relations (Tribunals) Amendment Rule (No. 1) 2002 SL No. 175

notfd gaz 28 June 2002 pp 876–83
 rr 1–2 commenced on date of notification
 remaining provisions commenced 1 July 2002 (see r 2)

Industrial Relations (Tribunals) Amendment Rule (No. 1) 2003 SL No. 151

notfd gaz 27 June 2003 pp 749–56
 commenced on date of notification

Training Reform Act 2003 No. 63 ss 1, 2(2), 60 sch

date of assent 13 October 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2004 (2003 SL No. 293)

Industrial Relations (Tribunals) Amendment Rule (No. 2) 2003 SL No. 320

notfd gaz 5 December 2003 pp 1114–7
 rr 1–2 commenced on date of notification
 remaining provisions commenced 8 December 2003 (see r 2)

7 List of annotations

What a reference to application or applicant includes

r 3A ins 2003 SL No. 320 r 4

Starting proceedings

r 7 amd 2003 SL No. 320 r 5

Form of applications

r 9 amd 2003 SL No. 320 r 6

Form of affidavit for rule 9(2)

prov hdg sub 2003 SL No. 320 r 7(1)

r 10 amd 2003 SL No. 320 r 7(2)

Document starting proceeding, or application in existing proceeding, to state address and phone and fax number

prov hdg amd 2003 SL No. 320 r 8(1)

r 11 amd 2003 SL No. 320 r 8(2)–(3)

Filing of documents

r 13 amd 2003 SL No. 320 r 9

Ways of filing

r 14 amd 2003 SL No. 320 r 10

Service of documents

r 27 amd 2003 SL No. 320 r 11

When affidavit of service is required**r 34** amd 2003 SL No. 320 r 12**Failure to attend or to comply with directions order****r 42** sub 2003 SL No. 320 r 13**Response to application****r 43** amd 2003 No. 320 r 14**Attendance notices****r 54** amd 2003 SL No. 320 r 15**Discontinuance of applications other than under Act, s 74****r 64** amd 2003 SL No. 320 r 16**Subdivision 10—Costs****sdiv hdg** amd 2001 SL No. 296 r 4**Costs****r 66** sub 2001 SL No. 296 r 5**Application to declare persons to be employees****r 70** amd 2003 SL No. 320 r 17**Application to amend or void contract****r 71** amd 2003 SL No. 320 r 18**Application for injunction under Act, s 277 or Whistleblowers Protection Act 1994, s 47****r 72** sub 2003 SL No. 320 r 19**Application to refer matter to full bench****r 76** amd 2003 SL No. 320 r 20**Application for reinstatement of training contract cancelled by coercion****r 78** amd 2003 No. 63 s 60 sch**Publishing decisions etc.****r 87** amd 2003 SL No. 320 r 21**Application of div 1****r 90** amd 2003 SL No. 320 r 22**Procedure for claims before industrial magistrate****r 92** amd 2003 SL No. 320 r 23**Summons****r 94** amd 2003 SL No. 320 r 24**Failure to attend or to comply with directions order****r 96A** ins 2003 SL No. 320 r 25**Application of pt 5****r 108** amd 2003 SL No. 320 r 26; 2003 No. 63 s 60 sch**Record for particular appeals****r 109** sub 2003 SL No. 320 r 27
amd 2003 No. 63 s 60 sch

Application for stay of decision under appeal

r 110 sub 2003 SL No. 320 r 27
amd 2003 No. 63 s 60 sch

Service of application

r 111 sub 2003 SL No. 320 r 27

Service of application if respondent is the council

r 112 amd 2003 SL No. 320 r 28; 2003 No. 63 s 60 sch

Application to appeal other than from industrial magistrate

r 114 sub 2003 SL No. 320 r 29

Response

r 117 amd 2003 SL No. 320 r 30

Division 3—Appeals from industrial magistrate

div hdg om 2003 SL No. 320 r 31

Application to appeal from industrial magistrate

r 119 sub 2003 SL No. 320 r 31

Industrial magistrate may order appellant's release from custody

r 120 sub 2003 SL No. 320 r 31

Form of arrest warrant

r 120A ins 2003 SL No. 320 r 31

Striking out application to appeal by released appellant after at least 2 month's delay

r 120B ins 2003 SL No. 320 r 31

Clerk of court to send documents to registrar

prov hdg sub 2003 SL No. 320 r 32(1)

r 121 amd 2003 SL No. 320 r 32(2)–(3)

Application for order for payment instead of long service leave

r 121A ins 2003 SL No. 320 r 33

Application for order for payment of proportionate payment for long service leave

r 121B ins 2003 SL No. 320 r 33

Application for order ensuring equal remuneration for work of equal or comparable value

r 122 amd 2003 SL No. 320 r 34

Application for order about severance and other separation benefits

r 125 amd 2003 SL No. 320 r 35

Application for order for contravention of Act, s 90

prov hdg amd 2003 SL No. 320 r 36(1)

r 126 amd 2003 SL No. 320 r 36(2)–(3)

Application for order for contravention of Act, s 90A

prov hdg amd 2003 SL No. 320 r 37(1)

r 127 amd 2003 SL No. 320 r 37(2)–(3)

Application for order about prohibited conduct

r 131 amd 2003 SL No. 320 r 38

Approved forms for applications—Act, s 125**r 131A** ins 2001 SL No. 296 r 6**Making or amending awards that relate to remuneration of employees****r 131B** ins 2001 SL No. 296 r 6
amd 2003 SL No. 320 r 39**Exemptions****r 132** amd 2003 SL No. 320 r 40**Advice of intention to begin negotiations for a project agreement****r 133** amd 2003 SL No. 320 r 41**Application for certificate as to requested representation****r 134** sub 2003 SL No. 320 r 42**Application for decision about designated award****r 138** sub 2003 SL No. 320 r 43**Application for certification****r 139** amd 2003 SL No. 320 r 44**Application to extend certified agreement****r 141** amd 2003 SL No. 320 r 45**Application to amend certified agreement****r 142** amd 2003 SL No. 320 r 46**Determination made under Act, s 149****r 143 prov hdg** amd 2003 SL No. 320 r 47**Notice terminating certified agreement on or before its nominal expiry date and application for approval of termination****r 144** sub 2003 SL No. 320 r 48**Notice of intention to terminate certified agreement after its nominal expiry date and application to terminate****r 144A** ins 2003 SL No. 320 r 48**Application for decision about designated award****r 145** sub 2003 SL No. 320 r 49**Notice of industrial dispute****r 149** amd 2003 SL No. 320 r 50**Applications for order for contravention of Act, s 238****r 150** amd 2003 SL No. 320 r 51**PART 13A—APPLICATION FOR ORDER FOR REPAYMENT OF FEE RECEIVED BY PRIVATE EMPLOYMENT AGENT****pt 13A (s 153A)** ins 2003 SL No. 320 r 52**PART 13B—APPLICATION FOR ORDER ON CONTRAVENTION OF ELECTRICAL SAFETY UNDERTAKING****pt 13B (s 153B)** ins 2003 SL No. 320 r 52

**PART 13C—APPLICATION FOR ORDER ON CONTRAVENTION OF
WORKPLACE HEALTH AND SAFETY UNDERTAKING****pt 13C (s 153C)** ins 2003 SL No. 320 r 52**Application about validity of, or compliance with, rules****r 160** amd 2003 SL No. 320 r 53**Application for approval to amend name under Act, s 473****r 162** amd 2003 SL No. 320 r 54**Application for approval of other amendment to rules****r 164** amd 2003 SL No. 320 r 55**Notice of objection to particular decisions and response to objection****r 165** sub 2003 SL No. 320 r 56**Application for exemption if federal ballot held****r 168** amd 2003 SL No. 320 r 57**Application for exemption from keeping members or officers register****r 169 prov hdg** amd 2003 SL No. 320 r 58**Application for exemption from accounting or audit provisions****r 170** amd 2003 SL No. 320 r 59**Application for exemption from accounting or audit obligations for an
employer organisation that is a corporation****r 171** amd 2003 SL No. 320 r 60**Application for exemption—number of members****r 176** amd 2003 SL No. 320 r 61**Application for amalgamation ballot exemption—recognising federal ballot****r 177** amd 2003 SL No. 320 r 62**Application for an exemption from holding a withdrawal
ballot—recognising federal ballot****r 179** amd 2003 SL No. 320 r 63**Direction about confidential material tendered in evidence—Act, s 679(5)****r 196** om 2003 SL No. 320 r 64**Continuation of proceeding after 6 months delay****r 200** amd 2003 SL No. 320 r 65**Lapse of proceeding after at least 1 year's delay****r 200A** ins 2003 SL No. 320 r 66**Striking out proceeding after at least 1 year's delay****r 201** sub 2003 SL No. 320 r 66**Vacations and holidays****r 201A** ins 2001 SL No. 296 r 7
amd 2003 SL No. 320 r 67**Transitional provision for Industrial Relations (Tribunals) Amendment Rule
(No. 2) 2003****r 203** ins 2003 SL No. 320 r 68

SCHEDULE 1—FEES IN THE COURT, COMMISSION OR REGISTRY

sub 2001 SL No. 108 r 4; 2001 SL No. 296 r 8; 2002 SL No. 175 r 4; 2003 SL No. 151 s 3

SCHEDULE 2—DICTIONARY

def “**application to appeal**” ins 2003 SL No. 320 r 69

def “**council**” sub 2003 No. 63 s 60 sch

def “**leave to appeal**” ins 2003 SL No. 320 r 69

def “**safety Act provision**” ins 2003 SL No. 320 r 69

def “**stay of a decision under appeal**” ins 2003 SL No. 320 r 69