



Queensland

*Industrial Relations Act 1999*

# **Industrial Relations (Tribunals) Rules 2011**

**Current as at 1 July 2013**

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Queensland

# Industrial Relations (Tribunals) Rules 2011

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# Industrial Relations (Tribunals) Rules 2011

[as amended by all amendments that commenced on or before 1 July 2013]

## Part 1 Preliminary

### 1 Short title

These rules may be cited as the *Industrial Relations (Tribunals) Rules 2011*.

### 2 Commencement

These rules commence on 1 January 2012.

### 3 Definitions

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

### 4 What a reference to application, application to appeal or applicant includes

- (1) A reference in part 2, other than rule 8, and in rules 229 to 231—
  - (a) to an application includes a reference to a notice of appeal under an appeal Act; and
  - (b) to an applicant includes a reference to an appellant to an appeal under an appeal Act.
- (2) A reference in part 5 to an application to appeal includes a reference to a notice of appeal under an appeal Act.

[r 5]

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## **5 Proceedings to which rules apply**

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

*Note—*

For the meaning of *magistrate*, see the Act, schedule 5.

## **6 Purpose of rules**

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

# **Part 2 Proceedings before court, commission or registrar**

## **Division 1 Application of pt 2**

### **7 Application of pt 2**

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

## **Division 2 Procedures**

### **Subdivision 1 Starting proceedings**

#### **8 Starting proceedings**

- (1) A proceeding must be started by an application in the approved form.



*Note—*

See rule 4.

- (2) However, subrule (1) does not apply—
- (a) to a proceeding started by a notice of appeal under an appeal Act; or
  - (b) if the court, commission, registrar or these rules require otherwise; or
  - (c) to a proceeding started on the initiative of the commission or registrar; or

*Note—*

For proceedings started on the initiative of the commission, see rule 99.

- (d) to a proceeding started as directed by the Minister under the Act; or
  - (e) to a proceeding arising out of the giving of a notice of industrial dispute under section 229 of the Act.
- (3) For these rules, an application to appeal, or notice of appeal under an appeal Act, is a document starting a proceeding.
- (4) A notice of appeal under an appeal Act must—
- (a) for an appeal to the commission under the *Workers' Compensation and Rehabilitation Act 2003*—be in the WCR approved form; or
  - (b) otherwise—be in the approved form.
- (5) A proceeding, other than a proceeding started by a notice of appeal under an appeal Act or an application for a WHS review, 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.

[r 9]

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*Notes—*

A proceeding started by a notice of appeal under an appeal Act, or an application for a WHS review under the *Work Health and Safety Act 2011*, starts as provided under that Act.

(6) In this rule—

***WCR approved form*** means an approved form for use for notices of appeal to the commission under the *Workers' Compensation and Rehabilitation Act 2003*.

## **9 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 the proceeding is—
  - (a) discontinued by leave of the court, commission or registrar; or
  - (b) finally determined by the court, commission or registrar.

## **10 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
  - (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 proceeding.
- (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;
- (b) an application for leave to appeal;
- (c) an application for a stay of a decision under appeal or review;
- (d) an application under section 163 or 696 of the Act;

*Editor's note—*

section 163 (Deciding designated awards) or 696 (Aged or infirm persons permits) of the Act

- (e) an application for a WHS review.

## **11 Form of affidavit for r 10(2)**

For rule 10(2), an affidavit supporting an application must—

- (a) if not made by the applicant in person—state the capacity and authority under which the person is making the affidavit; and
- (b) state concisely the material facts relied on to support the application; and
- (c) state any other matters required under these rules; and
- (d) comply with subdivision 6.

## **12 Document starting proceeding, or application in existing proceeding, to state address, telephone 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

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- (b) the applicant's telephone number (if any); and
  - (c) if the applicant has no telephone number—a way of contacting the applicant by telephone; 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 practises 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 telephone number and fax number.

*Note—*

Under rule 125, a notice of appointment of agent must be filed and served on all parties to the proceeding. Under rule 126, a lawyer representing a party or person in the proceeding must file and serve a notice of address for service on all parties to the proceeding.

- (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, if documents in the proceeding may be served on the applicant.

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### **13 General requirements for documents for filing**

- (1) Unless these rules provide otherwise, a document for filing must—
  - (a) be on A4 (210mm x 297mm) 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 11 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 2cm 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 125; and
  - (m) contain the information, including the applicant's address for service, required under rule 12.
- (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.

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## **14 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) A document is filed when the appropriate fee (if any) is paid and the document is stamped in the registry.
- (3) The registrar may refuse to accept a document for filing, or refuse to accept another document otherwise given to the registrar, if the document does not comply with—
  - (a) the Act; or
  - (b) an enabling Act; or
  - (c) these rules.

*Note—*

See, for example, the Act, sections 229, 456 and 488 for when the registrar may be given a document other than for filing.

## **15 Ways of filing**

Except as otherwise provided under these rules, 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) 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 an appeal from a decision of a magistrate—as required under rule 144.

*Note—*

See also rule 153(3).

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**16 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.

**17 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**

**18 Amending an application before hearing**

- (1) An application may be amended, before the hearing of the application, 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.

**19 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.

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## **20 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.

## **21 Serving amended application**

- (1) The applicant must serve an amended application on each other party to the proceeding 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 proceeding or a party required to be served under a directions order of the court, commission or registrar, 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.

## **22 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 proceeding.

## **23 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.

## **Subdivision 3 Service**

### **24 Who is to be served**

- (1) The party by or for whom a document is filed or issued in a proceeding 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.

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## **25 Time for service**

- (1) Unless these rules otherwise provide, a document required under these rules to be served 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 that a document be served in a shorter time.

## **26 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.

## **27 Service after 4p.m.**

If a document is served on a person after 4p.m., the document is taken to have been served on the next day.

## **28 Service of documents**

- (1) The following are the ways by which a document may be served on the person to be served—
  - (a) personal service under rule 29;
  - (b) for an organisation or association—giving the document 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

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a position where it is reasonably likely to come to the person's attention;

- (f) posting the document to the relevant address;

*Note—*

For the meaning of service by post see the *Acts Interpretation Act 1954*, section 39A.

- (g) if the person has given—
- (i) a fax number under these rules—faxing the document to the person; or
  - (ii) an email address for service of documents in the proceeding—emailing the document to the person;
- (h) if a proceeding is brought against the person in relation to a business carried on by the person under a name 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) 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

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- (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.

## **29 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 the original of the document to the person served.

## **30 Service of directions order on party**

- (1) The registrar may serve a copy of a directions order on the party who applied for the directions order by notifying the party 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 stated by the registrar in the notice.

## **31 Service by an officer of the court**

A document required under these rules to be served by the registrar may be served by the registrar or an officer of the court.

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### **32 Substituted service**

- (1) If for any reason it is impracticable to serve a document in the 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 state in the order 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 telephone or public advertisement

- (3) The court, commission or registrar may state in the order that the document is to be taken to have been served on the happening of a stated event or at the end of a stated time.
- (4) An application for an order under this rule must be in the approved form.

### **33 Informal service**

If—

- (a) for any reason, a document is not served as required by this subdivision, but the person to be served has otherwise come into possession of the document or a copy of it; 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.

### **34 Service on agent**

- (1) This rule applies if—

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- (a) 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; and
  - (b) a proceeding arises out of the contract.
- (2) The court, commission or registrar may, without deciding the agent's authority or business relationship with the principal, give leave for the document starting the proceeding to be served on the agent.
- (3) The party serving the document on the agent must immediately send 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.

### **35 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, stated in the agreement.
- (2) The document may be served in accordance with the agreement.

### **36 When affidavit of service is required**

- (1) To the extent not otherwise provided under these rules, a party serving a document starting a proceeding must, as soon as practicable after serving the document, file an affidavit of service of the document.

*Notes—*

- 1 See rule 8 for a document starting a proceeding.
  - 2 See also rule 135.
- (2) For a document served under rule 31, the registrar may give a direction about whether an affidavit of service is required.

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### **37 Form of affidavit of service**

- (1) An affidavit of service of a document must be in the approved form and—
  - (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 that enables the document to be identified.

### **38 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.

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### **39 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 telephone number from which the document is transmitted;
  - (f) the name and telephone 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.

### **40 Service outside Queensland**

- (1) This rule applies to service of a document outside Queensland but within Australia.
- (2) The document must be served under the *Service and Execution of Process Act 1992* (Cwlth).

## **Subdivision 4 Directions orders**

### **41 Directions orders**

- (1) The court, commission or registrar may make an order (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.



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- (2) A directions order may, for example, relate to the following—
- (a) 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 or documents;
  - (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—
    - (i) a written outline of submissions; or
    - (ii) submissions about the subject matter of the application;
  - (l) requiring—
    - (i) evidence to be given by affidavit; or

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- (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 relevant legislation or industrial instruments; and
    - (ii) a list of cases to be relied on 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.

## **42 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.

## **43 Further directions**

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

## **44 Hearing and deciding 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.

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**45 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 stating a time, date and place for a hearing or conference for the proceeding; and
  - (b) the party fails to attend the hearing or conference.
- (2) This rule also applies if—
  - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar; and
  - (b) 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, including, for example, a final order; or
  - (d) make orders under paragraphs (b) and (c).

**46 Duty of disclosure**

- (1) If a directions order requiring disclosure of documents is made, a party must disclose any document that—
  - (a) is relevant to the proceeding or a matter in issue in the proceeding; and
  - (b) is in, or comes into, the possession of the party.
- (2) A party must act under subrule (1) until the proceeding is concluded or the matter in issue is admitted, withdrawn, struck out or otherwise disposed of.
- (3) Subrule (1) does not apply to a document in relation to which there is a valid claim to privilege from disclosure.

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## **Subdivision 5      Response**

### **47      Response to applications**

- (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 stated time.
- (2) A response must be in the approved form and—
  - (a) admit or deny, 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 counterclaim in response to the matters raised in the application.
- (4) If the response contains a counterclaim, the counterclaim must be set out in enough detail to clearly identify the nature of the relief sought.
- (5) The party must—
  - (a) file the original and 3 copies of the response; and
  - (b) immediately serve a copy on the applicant and any other parties.
- (6) If the 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**

### **48      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.

#### **49 Notice to admit facts or documents**

- (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 proceeding only, the facts or documents stated in the notice.
- (2) If the other party does not, within 14 days after receiving a notice under subrule (1), serve a notice on the first party disputing the facts or the authenticity of the documents, the other party is taken to admit, for the proceeding only, the stated facts or the authenticity of the stated documents.
- (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).

#### **50 Evidence on affidavit**

- (1) Evidence may be given by affidavit under a direction of the court, commission or registrar.
- (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.

#### **51 Limitation of affidavit**

In an affidavit, a person may only make—

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- (a) for an affidavit supporting an application—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.

## **52 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 the affidavit for another person or entity—state that the person is authorised to swear it; 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 on each page by the person making the affidavit and the person taking the affidavit.

## **53 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..’.

#### **54 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.

#### **55 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.

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## **56 Time for filing affidavits**

If an affidavit must be filed within a particular 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.

## **57 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 notices**

### **58 Issue of attendance notices**

- (1) On the request of a party, a member of the commission or the registrar may issue an attendance notice to a person.
- (2) On the direction of a member of the commission, the registrar must issue an attendance notice to a person.
- (3) For subrule (1), 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 a draft of the attendance notice, in the approved form, that is requested.
- (4) An attendance notice, other than an attendance notice for a compulsory conference, may only be directed to a single person.



- (5) 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.

## **59 Requirements for attendance notice to produce**

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

- (a) adequately describe the document or thing; and
- (b) contain a notice, in the approved form, telling the person 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, for example—
  - (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.

## **60 Inspection of document or thing produced under attendance notice**

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

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- (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 that the part be closed.

## **61 Setting aside attendance notice**

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

## **62 Allowance for attendance and expenses**

- (1) A person who attends before the court, commission or registrar 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, commission or registrar may treat the failure of a party to pay the person's expenses as a lawful excuse for failure to comply with the attendance notice.

## **63 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, commission or registrar 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 appropriate officer of the court or commission must—

- (a) issue a receipt; and
  - (b) notify the party who requested production of the document or thing that it has been produced at the registry; and
  - (c) deal with the document 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.

#### **64 Serving attendance notice**

An attendance notice must be served under rule 28.

### **Subdivision 8 Hearing**

#### **65 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 to the proceeding notice of the time, date and place as soon as practicable after they are fixed.
- (4) The notice may be given orally or in writing.

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## **66 Hearing in respondent's absence**

The commission may hear and decide an application under section 278 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.

*Editor's note—*

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

## **67 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.
- (3) The application to rehear 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**

### **68 Discontinuance of applications other than under Act, s 74**

- (1) This rule applies to an application before the court, commission or registrar, other than an application for reinstatement under section 74(1) of the Act.

*Note—*

For applications under section 74(1) of the Act, see rule 153.

- (2) The applicant may ask to be allowed to discontinue the proceeding by filing a written request in the approved form.
- (3) When filing the request, the applicant must serve a copy of the request on each of the other parties to the application.
- (4) A party may object to the discontinuance by notice to the registrar within 14 days after being served with the request to discontinue.
- (5) If no party objects within the 14 days, the court, commission or registrar may allow the proceeding to be discontinued.
- (6) If a proceeding is allowed to be discontinued, the court, commission or registrar must note the file to that effect.
- (7) If a party objects to the discontinuance under subrule (4), the court, commission or registrar may allow or disallow the request for discontinuance on the terms the court, commission or registrar considers appropriate.

## **69 Other discontinuance**

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

## **Subdivision 10 Costs**

### **70 Costs**

- (1) This rule applies if the court or commission makes an order for costs under section 335 of the Act.
- (2) 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

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under the *Uniform Civil Procedure Rules 1999*, schedule 3; 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; 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; or
  - (d) any other relevant factor.
- (3) 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 17A.

## **Subdivision 11      Recovery of amounts under orders**

### **71      Certificate under Act, s 336**

A certificate under section 336 of the Act must be in the approved form.

## **Division 3              Commission’s functions and powers**

### **Subdivision 1      Applications under the Act**

#### **72      Application for declaration about industrial matter**

An application for a declaration about an industrial matter under section 274A of the Act must be in the non-chapter 12 approved form and state—

- (a) the declaration sought; and
- (b) the industrial matter about which the declaration is sought; and

- (c) the facts relied on; and
- (d) any consequential relief claimed if the declaration is made.

**73 Application for order declaring persons to be employees or employers**

An application for an order under section 275 of the Act must be in the non-chapter 12 approved form and state—

- (a) the class of persons to be declared employees; and
- (b) the work performed by the persons; and
- (c) the industry in which the work is performed; and
- (d) the nature and effect of the contract for services under which the work is performed; and
- (e) the person to be declared an employer of the employees.

**74 Application to amend or declare void contract**

(1) For section 276 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 as 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.

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- (3) An affidavit contained in or accompanying the application must state that the applicant—
  - (a) has not made an application under section 74 of the Act for the same matter; and
  - (b) is not a person mentioned in section 276(6)(b) 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.

#### **75 Application for injunction under Act, s 277**

An application for an injunction under section 277 of the Act must—

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

#### **76 Application to recover unpaid wages and superannuation contribution etc.**

- (1) An application for an order for the payment of an amount under section 278 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 employee, has not made an application under section 399, 400F or 408 of the Act for the same matter; and
  - (d) state details, in itemised form, of the claim; and
  - (e) state the dates the amounts claimed became payable; and



- (f) state the total amount claimed; and

*Note—*

Under the Act, section 278, a claim can not be made for more than \$50000.

- (g) show how each calculation was made; and

- (h) provide the following information—

- (i) the employer's name, address and telephone and fax number (if any);
- (ii) if the employer is a business—a contact name for the employer;
- (iii) if the employer has no telephone—a way the employer may be contacted by telephone.

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

## **77 Application for order about representation rights of associations or employee organisations**

An application under section 279 of the Act for an order about a demarcation dispute must be in the non-chapter 12 approved form.

## **78 Application to reopen**

An application to reopen proceedings under section 280 of the Act must be in the non-chapter 12 approved form and state the grounds relied on.

## **79 Application to refer matter to full bench**

An application to refer a matter to the full bench under section 281(3) of the Act must be in the non-chapter 12 approved form, unless the vice president or registrar allows otherwise.

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## **80 Application for interpretation of industrial instrument**

- (1) An application for an interpretation of an industrial instrument under section 284 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 relating to an alleged ambiguity.

## **Subdivision 2 Applications and notices under other Acts**

### **81 Application for injunction—Public Interest Disclosure Act 2010**

An application for an injunction under the *Public Interest Disclosure Act 2010*, section 48 must—

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

### **82 Application for reinstatement of training contract cancelled by coercion—Vocational Education, Training and Employment Act 2000**

An application for an order under the *Vocational Education, Training and Employment Act 2000*, section 62 must be in the non-chapter 12 approved form.

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**83 Application for reinstatement order for injured worker—Workers' Compensation and Rehabilitation Act 2003**

An application for an order that an employer reinstate a worker to the worker's former position under the *Workers' Compensation and Rehabilitation Act 2003*, section 232E must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the date of the injury; and
- (c) state the worker's former position.

**84 Application to disqualify health and safety representative—Work Health and Safety Act 2011**

An application to disqualify a health and safety representative under the *Work Health and Safety Act 2011*, section 65 must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the ground for the application.

*Note—*

See the *Work Health and Safety Act 2011*, section 65(1) for the grounds for the application.

**85 Application to revoke WHS entry permit—Work Health and Safety Act 2011**

An application to revoke a WHS entry permit under the *Work Health and Safety Act 2011*, section 138 must—

- (a) be in the approved form; and
- (b) state the grounds for the application.

*Note—*

See the *Work Health and Safety Act 2011*, section 138(2) for the grounds for the application.

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**86 Show cause notice for WHS entry permit holder—Work Health and Safety Act 2011**

A show cause notice under the *Work Health and Safety Act 2011*, section 139(1)(a) must be in the approved form.

*Note—*

See also the *Work Health and Safety Act 2011*, section 139(2) for other requirements about the show cause notice.

**87 Application to deal with dispute about WHS entry permit holder's right of entry—Work Health and Safety Act 2011**

An application under the *Work Health and Safety Act 2011*, section 142(4)(b) for the commission to deal with a dispute about the exercise or purported exercise by a WHS entry permit holder of a right of entry under that Act must be in the approved form.

## **Division 4 Registrar's functions and powers**

**88 Powers**

- (1) For a matter in which the registrar has jurisdiction under the Act or an enabling 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—

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- (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 a proceeding;
  - (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.

**89 Notice of objection to proposed declaration—Trading (Allowable Hours) Act 1990**

A notice of objection to a proposal to declare an industrial commission order to be obsolete under the *Trading (Allowable Hours) Act 1990*, section 31 must—

- (a) be in the approved form; and
- (b) state the reasons for the objection.

**90 Application for WHS entry permit—Work Health and Safety Act 2011**

An application for the issue of a WHS entry permit under the *Work Health and Safety Act 2011*, section 131 must be in the approved form.

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*Note—*

See also the *Work Health and Safety Act 2011*, section 131(2) for other requirements about the application.

## **Division 5            Practice**

### **Subdivision 1        Court, commission or registrar**

#### **91            Using recording devices**

A person who is not a recorder under the *Recording of Evidence Act 1962* must not use a recording device in a proceeding unless the court, commission or registrar allows it.

#### **92            Practice notes**

The court, commission or registrar may, by notice published on the QIRC website, issue practice notes for the guidance of parties to a proceeding.

#### **93            Extension or shortening of time**

- (1) Subject to the Act, an enabling Act or these rules, a party to a proceeding 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.
- (3) If the court, commission or registrar decides to extend or shorten the prescribed time, the court, commission or registrar must give notice of its decision to each party to the proceeding to which the application relates.

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**94 Exhibits not to be taken out**

A party to a proceeding must not take an exhibit out of the court, commission or registry other than under an order of the court, commission or registrar.

**95 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.

**96 Continuance of proceedings—death of party**

- (1) A proceeding 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.

**97 Publishing decisions etc.**

- (1) The registrar may publish on the QIRC website—
  - (a) a decision of the court, commission or registrar; and
  - (b) notice of the making or amendment of a certified agreement.
- (2) The registrar must publish the following on the QIRC website—

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- (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 287 of the Act;
  - (d) the date stated in the general ruling as the date on and from which the general ruling has effect.
- (3) 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.

## **Subdivision 2 Court or commission**

### **98 Joining proceedings**

- (1) A party to a proceeding before the court or commission may apply to the court or commission for the proceeding to be joined with another proceeding.
- (2) The court or commission may order 2 proceedings to be joined if it considers—
  - (a) substantially the same question is involved in 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) for a written order joining the proceedings to be made; 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.

## **99 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.

## **Subdivision 3 Registrar**

### **100 Registrar may refer certain documents to court or commission**

- (1) This rule applies if the registrar considers a document for filing is—
  - (a) an abuse of the process of the court or commission; or
  - (b) 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.

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## **Part 3**                      **Proceedings before magistrates**

### **Division 1**                **Claims**

#### **101**     **Application of div 1**

This division applies to the following claims—

- (a) a claim for compensation under section 83 of the Act;
- (b) a claim under chapter 11, part 2, division 2 of the Act;
- (c) a claim for damages for contravention of an agreement made under an industrial instrument;
- (d) a claim for damages suffered by an employee because the employer failed to pay the employee's wages;
- (e) a claim under section 399 of the Act;
- (f) a claim for unpaid superannuation under section 408 of the Act;
- (g) a claim for repayment of a fee under section 408G of the Act;
- (h) a claim for the recovery of a debt under the *Workers' Compensation and Rehabilitation Act 2003*, section 580 or 581.

#### **102**     **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.

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### **103 Procedure**

- (1) An application for a claim before a 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 for a claim under section 399, 408 or 408G of the Act is the time allowed under that section and not under the *Justices Act 1886*.

### **104 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 a 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 the claim must be served on the respondent.
- (3) For a proceeding under the *Workers' Compensation and Rehabilitation Act 2003* mentioned in rule 101(h), the summons must require the respondent to appear before a magistrate at—
  - (a) the Magistrates Court in the Magistrates Courts district in which the respondent resides or has its registered office; or
  - (b) a Magistrates 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 56 applies to service of a summons as if an application for a claim were a complaint under that Act for a charge for a simple offence.

### **105 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

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before a magistrate, the magistrate may make an order substituting another way of serving the document.

- (2) The magistrate may, in the order, state 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 telephone or public advertisement

- (3) The magistrate may, in the order, state that the document is to be taken to have been served on the happening of a stated event or at the end of a stated time.
- (4) An application for an order under this rule must state the grounds relied on and be supported by an affidavit.

## **106 Alternative dispute resolution process**

The *Uniform Civil Procedure Rules*, chapter 9, part 4 applies to a claim with necessary changes.

## **107 Onus of proof**

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

## **108 Notice to admit facts or documents**

- (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 proceeding only, the facts or documents stated in the notice.
- (2) If the other party does not, within 14 days after receiving a notice under subrule (1), serve a notice on the first party disputing the facts or the authenticity of the documents, the other party is taken to admit, for the proceeding only, the stated facts or the authenticity of the stated documents.
- (3) The other party may, with the leave of a magistrate, withdraw an admission taken to have been made under subrule (2).

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## 109 Enforcement of order

- (1) This rule applies if a 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 magistrate; or
  - (b) the clerk of the Magistrates Court.
- (4) On the filing of the certificate in a Magistrates Court, the certificate is enforceable as an order of the Magistrates Court but only to the extent of the amount of damages.

## 110 Costs and expenses

A magistrate may allow costs and expenses for a proceeding for a claim under the scale of costs for Magistrates Courts under the *Uniform Civil Procedure Rules 1999*, schedule 3 as if the proceeding were in a Magistrates Court.

## Division 2 Proceeding for order under Electrical Safety Act 2002

### 111 Application for order—Electrical Safety Act 2002, s 54

- (1) An application for an order under the *Electrical Safety Act 2002*, section 54(2) in relation to an electrical safety undertaking must be in the approved form and state the following—
  - (a) the facts constituting the alleged contravention of the undertaking;

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- (b) 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.

## Division 3 Proceedings for appeals

### 112 Starting an appeal

- (1) A notice of appeal starting an appeal to a magistrate under an appeal Act must—
- (a) for an appeal to a magistrate under the *Workers' Compensation and Rehabilitation Act 2003*—be in the IM approved form; or
- (b) otherwise—be in the approved form.
- (2) In this rule—
- IM approved form* means an approved form for use for notices of appeal to a magistrate under the *Workers' Compensation and Rehabilitation Act 2003*.

## Division 4 Directions orders

### 113 Directions orders

- (1) A magistrate may make an order (a *directions order*) about the conduct of a proceeding on the request of a party or on the initiative of the magistrate.
- (2) A directions order may, for example, relate to the following—

- (a) 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 or documents;
- (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 magistrate;
- (k) requiring the parties to file—
  - (i) a written outline of submissions; or
  - (ii) 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—

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- (i) the identification of the provisions of any relevant legislation or industrial instruments; and
- (ii) a list of cases to be relied on to be provided;
- (n) requiring disclosure of documents;
- (o) requiring inspection of documents.

#### **114 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 a magistrate stating a time, date and place for a hearing or conference for the proceeding; and
  - (b) the party fails to attend at the hearing or conference.
- (2) This rule also applies if—
  - (a) a party to a proceeding receives notice of a directions order made by a magistrate; and
  - (b) the party fails to comply with the order.
- (3) A magistrate may—
  - (a) dismiss the proceeding; or
  - (b) make a further directions order; or
  - (c) make another order dealing with the proceeding that the magistrate considers appropriate, including, for example, a final order; or
  - (d) make orders under paragraphs (b) and (c).

#### **115 Duty of disclosure**

- (1) If a directions order requiring disclosure of documents is made, a party must disclose any document that—
  - (a) is relevant to the proceeding or a matter in issue in the proceeding; and
  - (b) is in, or comes into, the possession of the party.



- (2) A party must act under subrule (1) until the proceeding is concluded or the matter in issue is admitted, withdrawn, struck out or otherwise disposed of.
- (3) Subrule (1) does not apply to a document in relation to which there is a valid claim to privilege from disclosure.

## **Division 5                      Attendance notices**

### **116      Issue of attendance notice**

- (1) On the request of a party, the clerk of a Magistrates Court may issue an attendance notice to a person.
- (2) On the direction of a magistrate, the clerk of a Magistrates Court must issue an attendance notice to a person.
- (3) 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 magistrate otherwise directs; and
  - (c) be filed; and
  - (d) be accompanied by a draft of the attendance notice, in the approved form, that is requested.
- (4) An attendance notice may only be directed to a single person.
- (5) 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.

### **117      Requirements for attendance notice to produce**

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

- (a) adequately describe the document or thing; and

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- (b) contain a notice, in the approved form, telling the person that the person has the right to apply to an Industrial Magistrates Court to have the attendance notice set aside on any sufficient grounds, including, for example—
  - (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.

#### **118 Inspection of document or thing produced under attendance notice**

- (1) A document or thing produced to a magistrate, whether produced voluntarily or under an attendance notice, may be inspected by—
  - (a) the magistrate; and
  - (b) with permission of the magistrate—a party.
- (2) However, information obtained from a document must not be made public without the permission of the magistrate.
- (3) If the magistrate considers that part of a document does not relate to a matter in issue, the magistrate may order that the part be closed.

#### **119 Setting aside attendance notice**

A magistrate may, by order, set aside part or all of an attendance notice.

#### **120 Allowance for attendance and expenses**

- (1) A person who attends an Industrial Magistrates Court 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) A magistrate may treat the failure of a party to pay the person's expenses as a lawful excuse for section 661 of the Act.

## **121 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 a magistrate otherwise directs, the attendance notice must permit the person to produce, by the day before the day production is required, the document or thing to an Industrial Magistrates Court.
- (3) If a document or thing is produced to an Industrial Magistrates Court under subrule (2), the appropriate officer of the court must—
- (a) issue a receipt; and
  - (b) notify the party who requested production of the document or thing that it has been produced to the Industrial Magistrates Court; and
  - (c) deal with the document or thing as the magistrate 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 an Industrial Magistrates Court.

[r 122]

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## **122 Serving attendance notice**

An attendance notice must be served under rule 28.

## **Division 6 Adjourments**

### **123 Adjourment**

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

## **Part 3A Trans-Tasman proceedings**

### **Division 1 Preliminary**

#### **123A Definition for pt 3A**

In this part—

*Trans-Tasman Proceedings Act* means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

#### **123B Interpretation**

Words and expressions used in this part and the Trans-Tasman Proceedings Act have the same meaning in this part as they have in that Act except so far as the context or subject matter otherwise indicates or requires.

*Note*—

The following words and expressions are defined in the Trans-Tasman Proceedings Act, section 4—

- audio link

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- audiovisual link
  - document
  - enforcement
  - entitled person
  - given
  - liable person
  - NZ judgment
  - party
  - proceeding
  - registered NZ judgment.

### **123C Application of pt 3A**

This part applies to civil proceedings to which the Trans-Tasman Proceedings Act applies.

## **Division 2 Attendance notices**

### **123D Application for leave to serve attendance notice in New Zealand**

- (1) A party to a proceeding who requires the leave of the court to serve an attendance notice in New Zealand under the Trans-Tasman Proceedings Act, section 31 must make an application for leave in the proceeding in which the attendance notice was issued.

*Note—*

See the Trans-Tasman Proceedings Act, section 4, definition *subpoena*.

- (2) The application must be accompanied by—
- (a) a copy of the attendance notice in relation to which leave is sought; and
  - (b) an affidavit stating, briefly but specifically, the following—

[r 123D]

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- (i) the name, occupation and address of the person named in the attendance notice;
- (ii) whether the person is over 18 years;
- (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the person;
- (iv) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person;
- (v) the date by which it is intended to serve the attendance notice in New Zealand;
- (vi) details of the amounts to be tendered to the person to meet the person's reasonable expenses of complying with the attendance notice;
- (vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the person;
- (viii) if the attendance notice requires the person to give evidence—an estimate of the time that the person will be required to attend to give evidence;
- (ix) any facts or matters known to the party making the application that may be grounds for an application by the person to have the attendance notice set aside under the Trans-Tasman Proceedings Act, section 36(2) or (3).

*Notes—*

- 1 See the Trans-Tasman Proceedings Act, section 31 which allows the court to impose conditions when giving leave to serve an attendance notice in New Zealand.
  - 2 See also the Trans-Tasman Proceedings Act, sections 33 and 37 which make provision in relation to the payment of expenses in complying with an attendance notice.
- (3) Despite rule 228, a person must not, without the leave of the court, search for, inspect or copy a document in an application under this rule filed in the court.

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**123E Application to set aside attendance notice**

- (1) A person applying under the Trans-Tasman Proceedings Act, section 35 to set aside an attendance notice served in New Zealand must make the application in the proceeding in which the attendance notice was issued.
- (2) The application must be accompanied by—
  - (a) a copy of the attendance notice; and
  - (b) an affidavit stating the following—
    - (i) the material facts on which the application is based;
    - (ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

**123F Application for issue of certificate of noncompliance with attendance notice**

- (1) A party to a proceeding may apply to the court that issued an attendance notice for a certificate mentioned in the Trans-Tasman Proceedings Act, section 38 (a *certificate of noncompliance*).
- (2) The application may be made—
  - (a) if the proceeding in which the attendance notice was issued is before the court—orally to the court; or
  - (b) by filing the application.
- (3) The application must be accompanied by—
  - (a) a copy of the attendance notice; and
  - (b) a copy of the order giving leave to serve the attendance notice; and
  - (c) an affidavit of service of the attendance notice; and
  - (d) a further affidavit stating the following—
    - (i) whether any application was made to set aside the attendance notice;

[r 123G]

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- (ii) the material in support of an application mentioned in subparagraph (i);
- (iii) any order that disposed of an application mentioned in subparagraph (i);
- (iv) the material facts relied on for the issue of the certificate of noncompliance.

*Note—*

A certificate of noncompliance is to be stamped by the registrar with the seal of the court.

## **Division 3                      Registration and enforcement of NZ judgments**

### **123G Notice of registration of NZ judgment**

- (1) An entitled person must not take any step to enforce a registered NZ judgment, in the period mentioned in the Trans-Tasman Proceedings Act, section 74(2), unless the entitled person has filed an affidavit stating that notice of the registration of the NZ judgment has been given in accordance with the Trans-Tasman Proceedings Act, section 73.
- (2) If a liable person against whom the registered NZ judgment is enforceable is not in Australia, the affidavit may be served without leave of the court.
- (3) An entitled person must file a further affidavit proving service of the affidavit mentioned in subrule (1) before any step is taken to enforce the registered NZ judgment.

### **123H Application for extension of time to give notice of registration of NZ judgment**

- (1) An entitled person applying for an extension of the time within which to give notice of the registration of an NZ judgment under the Trans-Tasman Proceedings Act, section 73(3) must make the application in the proceeding in which the NZ judgment was registered.



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- (2) The application must be supported by an affidavit stating the following—
- (a) briefly but specifically, the grounds relied on in support of the application;
  - (b) the material facts relied on in support of the application;
  - (c) why notice will not be, or was not, given within time.

### **123I Enforcement of registered NZ judgment**

- (1) The form of enforcement warrant used in relation to the enforcement of a registered NZ judgment must be amended, in a way approved by the registrar, by—
- (a) stating that the judgment is a registered NZ judgment; and
  - (b) specifying the date of, and the amount payable under, the registered NZ judgment; and
  - (c) specifying the amount of interest that is payable under the Trans-Tasman Proceedings Act, section 78(a) in relation to the registered NZ judgment.
- (2) For subrule (1)(b), if the registered NZ judgment is registered in a currency other than Australian currency, the specified amount payable must be the amount payable under the registered NZ judgment as if it were for an equivalent amount in Australian currency based on the Trans-Tasman Proceedings Act rate of exchange.
- (3) In this rule—

***Trans-Tasman Proceedings Act rate of exchange*** means the rate of exchange mentioned in the Trans-Tasman Proceedings Act, section 69(2), as if the conversion day mentioned in that section were a reference to the day an application for an enforcement warrant for the amount payable under the registered NZ judgment is filed.

*Note—*

See the Trans-Tasman Proceedings Act, section 74 for the effect of registration of an NZ judgment.

[r 123J]

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### **123J Application to set aside registration of NZ judgment**

- (1) A liable person applying to set aside the registration of an NZ judgment under the Trans-Tasman Proceedings Act, section 72(1) must make the application in the proceeding in which the NZ judgment was registered.
- (2) The application must be accompanied by an affidavit stating the following—
  - (a) briefly but specifically, the grounds on which the registration of the NZ judgment should be set aside;
  - (b) the material facts relied on in support of the application.

*Note—*

See the Trans-Tasman Proceedings Act, section 72(2) for when an application to set aside the registration of an NZ judgment may be made.

### **123K Applications relating to a stay of enforcement of registered NZ judgment**

- (1) This rule applies to an application for an order under the Trans-Tasman Proceedings Act, section 76.

*Note—*

See the Trans-Tasman Proceedings Act, section 76(1) and (3)(b).

- (2) The application must—
  - (a) be made in the proceeding in which the NZ judgment was registered; and
  - (b) be accompanied by an affidavit stating the following—
    - (i) the order sought;
    - (ii) briefly but specifically, the grounds relied on in support of the order;
    - (iii) the material facts relied on in support of the application;
    - (iv) if the application is for an order under the Trans-Tasman Proceedings Act, section

76(3)(b)—why the application will not be, or was not, made within time.

## **Division 4                      Remote appearances**

### **123L    Application for order for use of audio link or audiovisual link**

- (1) A party to a proceeding applying for leave for an order that an appearance be made, evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand under the Trans-Tasman Proceedings Act, section 48 or 50, must make the application in the proceeding to which the appearance, evidence or submissions relate.
- (2) Subrule (1) does not apply to a request mentioned in rule 123E(2)(b)(ii).

## **Part 4                                      Lawyers, agents and other representatives**

### **124    Representation in proceedings**

- (1) An act required or permitted to be done by a party or person in a proceeding 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.
- (2) Subrule (1) applies unless the Act, an enabling Act or these rules provide otherwise.

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## **125 Notice of appointment of agent**

- (1) An agent may be appointed under section 319(1)(a) of the Act to represent a party or person in a proceeding 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.

*Note—*

For the requirement for a notice of appointment of agent to accompany a document for filing, see rule 13.

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

## **126 Lawyer's notice of address for service**

- (1) Unless an address for service has already been filed and served in another way, a lawyer who represents a party or person under section 319(2) of the Act must, as soon as practicable after being appointed, file a notice of address for service and serve a copy of the notice on all parties to the proceeding.
- (2) The notice must be in the approved form.

## **127 Withdrawal of appointment as lawyer or agent**

- (1) A party or person who has appointed a lawyer or agent to represent the party or person in a proceeding may withdraw the appointment by filing a notice in the approved form and serving a copy of the notice on all parties to the proceeding.
- (2) On filing, the address for service stated in the notice is the party's or persons's address for service.

**128 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 new lawyer or agent must, as soon as practicable after appointment, file a notice of change of lawyer or agent and serve a copy of the notice on the party's or person's former lawyer or agent and all parties to the proceeding.
- (3) The notice must be in the approved form.
- (4) On filing, the address for service stated in the notice is the party's or person's address for service.

**129 Making or signing documents for organisation or association**

For these rules, a document may be made or signed by an organisation or association if it is made or signed under the rules of the organisation or association.

**130 No representation by removed or suspended lawyers**

A party may not be represented in a proceeding by a person if—

- (a) the person's name has been removed from the local roll under the *Legal Profession Act 2007*; or
- (b) the person's practising certificate under that Act has been suspended.

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## **Part 5 Appeals and WHS reviews**

### **Division 1 General**

#### **131 What a reference to appellant includes for pt 5**

In this part, a reference to an appellant includes a reference to an applicant for a WHS review.

#### **132 Application of pt 5**

- (1) This part applies to an appeal—
  - (a) to the court under section 341 of the Act from a decision of the commission, a magistrate or the registrar; or
  - (b) to the full bench under section 342 of the Act from a decision of the commission, a magistrate or the registrar; or
  - (c) to the commission under section 343 of the Act from a decision of the registrar made under section 695 of the Act; or
  - (d) to the commission under section 344 of the Act against a stand-down; or
  - (e) under an appeal Act; or
  - (f) under the *Child Employment Act 2006*, section 27; or
  - (g) under the *Vocational Education, Training and Employment Act 2000*, section 230.
- (2) This part also applies to a WHS review.

#### **133 Record for particular appeals and WHS reviews**

- (1) This rule does not apply to an appeal mentioned in rule 132(1)(d).
- (2) The record for the appeal or WHS review consists of the following—

- (a) the application to appeal or the application for the WHS review;
- (b) any of the following that is the subject of the appeal or WHS review—
  - (i) an order;
  - (ii) an industrial instrument;
  - (iii) a training contract;
  - (iv) a registered training contract under the *Vocational Education, Training and Employment Act 2000*;
  - (v) a completion certificate under the *Vocational Education, Training and Employment Act 2000*;
  - (vi) a qualification or statement of attainment as defined under the *Vocational Education, Training and Employment Act 2000*, schedule 3;
  - (vii) a declaration, variation of a declaration, or refusal to vary a declaration, of a prohibited employer under the *Vocational Education, Training and Employment Act 2000*;
  - (viii) a written refusal by Skills Queensland to approve the temporary stand-down of an apprentice or trainee from his or her apprenticeship or traineeship;
  - (ix) a decision, determination, direction or notice made or given under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*;
  - (x) a directive given by the chief inspector under the *Coal Mining Safety and Health Act 1999*, part 9, division 5;
  - (xi) a directive given by the chief inspector under the *Mining and Quarrying Safety and Health Act 1999*, part 9, division 5;
- (c) a notice to show cause—

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- (i) given under rule 147(2) or 231(2) relating to the proceeding in which the decision was made; or
  - (ii) given under section 233(7) of the Act relating to the decision; or
  - (iii) given under the *Vocational Education, Training and Employment Regulation 2000*, section 25 relating to the decision; or
  - (iv) given under the *Work Health and Safety Act 2011*, section 139 relating to the decision;
- (d) any written representations made in response to a notice to show cause mentioned in paragraph (c);
- (e) an information notice for the decision given under the following—
- (i) the *Child Employment Act 2006*, section 15;
  - (ii) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, section 69(7) or 91(7)(d);
  - (iii) the *Vocational Education, Training and Employment Act 2000*;
  - (iv) the *Petroleum and Gas (Production and Safety) Act 2004*, section 799;
- (f) a certificate of service under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 47 relevant to the appeal;
- (g) a copy of the application for reconsideration of a decision and any submissions properly made under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, section 91;
- (h) a certificate of competency under the *Coal Mining Safety and Health Act 1999* relevant to the appeal;
- (i) a certificate of competency under the *Mining and Quarrying Safety and Health Act 1999* relevant to the appeal;



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- (j) a notice of proposed noncompliance action given under the *Petroleum and Gas (Production and Safety) Act 2004*, section 796 that is relevant to the appeal;
  - (k) a copy of the application for compensation made under the *Workers' Compensation and Rehabilitation Act 2003*, section 132;
  - (l) the decision, including any notice of the decision and the reasons for the decision;
  - (m) if the decision was as a result of a review—the decision the subject of review, including any notice of the decision and any reasons for the decision;
  - (n) any published reasons for the decision;
  - (o) an industrial instrument or statement of principle mentioned in the decision;
  - (p) 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 or WHS review may seek a direction under subrule (3).

### **134 Application for stay of decision under appeal or review**

- (1) An application for a stay of a decision under appeal or review must—
- (a) be in the approved form; and
  - (b) include—
    - (i) details of the interest of the applicant; and

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- (ii) any other facts and circumstances relevant to the exercise of the jurisdiction of the court, the commission or a magistrate.

*Note—*

See schedule 2 for the definition *stay of a decision under appeal or review*.

- (2) An application for a stay of a decision under appeal or review must not form part of—
  - (a) an application for leave to appeal; or
  - (b) an application to appeal; or
  - (c) an application for a WHS review.

### **135 Service of applications**

- (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 review; or
  - (d) an application for a WHS review.
- (2) Unless an enabling Act otherwise provides, the appellant must, within 7 days after the day the application is filed, serve the application on—
  - (a) all respondents to the appeal or WHS review; and
  - (b) any other person required to be served under an enabling Act; and
  - (c) anyone else the court, the commission or a magistrate may direct.
- (3) The appellant must file an affidavit of service of the application within 7 days after the day of service.
- (4) If Skills Queensland is a respondent to an appeal, subrule (2) is taken to be complied with if the appellant serves the application on Skills Queensland.

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**136 Service of application if respondent is Skills Queensland**

- (1) This rule applies if—
  - (a) Skills Queensland is a respondent to an appeal under the *Vocational Education, Training and Employment Act 2000*, section 230; and
  - (b) Skills Queensland is served with the application to appeal under rule 135.
- (2) Skills Queensland must promptly—
  - (a) serve a copy of a document mentioned in rule 133(2)(b)(ii) to (viii), (c)(iii), (d), (e)(iii) or (l) on the appellant and any other person who may be directly affected by the relief sought in the appeal; and
  - (b) send the originals of the documents to the registrar with a notice stating the names, addresses and contact telephone and fax numbers, if any, of the persons served.

**137 Failure to prosecute appeal or WHS review**

- (1) This rule applies if an appellant fails to comply with either of the following—
  - (a) any step required under the Act, an enabling Act or these rules;
  - (b) any direction or order, including a direction or order about filing or serving a written outline of submissions or argument.
- (2) The court, the commission or a magistrate may dismiss the appeal or WHS review for want of prosecution—
  - (a) at or before the hearing of the appeal or WHS review; and
  - (b) either—
    - (i) on its own initiative; or
    - (ii) on application by the respondent.

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## **Division 2                      Review by commission**

### **138      Application for WHS review**

An application for a WHS review must state the following—

- (a) the decision to be reviewed;
- (b) the full grounds for review and the facts relied on;
- (c) the decision the applicant wants instead of the decision under review.

*Note—*

An application for a WHS review must be in the approved form. See rule 8(1).

## **Division 3                      Appeal to court or commission**

### **139      Application to appeal, other than from magistrate or to full bench from registrar**

(1) An application to appeal to the court or commission must—

- (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.

*Note—*

An application to appeal must be in the approved form. See rules 4 and 8(1) and (4).

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- (2) However, this rule does not apply to an appeal to the court or commission from—
- (a) a decision of a magistrate; or
  - (b) a decision of the registrar under section 342(6) or (7) of the Act.

**140 Application for leave to appeal to full bench—Act, s 342(1) or (2)**

- (1) An application for the full bench's leave to appeal under section 342(1) or (2) of the Act must state the following—
- (a) the name and last known address of each respondent or other party;
  - (b) the grounds of the appeal;
  - (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.

*Note—*

A proceeding is started by an application in the approved form. See rule 8(1).

- (2) If the application is made under section 342(1) of the Act, the grounds of appeal stated in the application must not include an error of law or excess, or want, of jurisdiction.

**141 Application for leave to appeal refused—Act, s 342(1) or (2)**

If the full bench refuses to grant leave to appeal under section 342(1) or (2) of the Act—

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

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**142 Response to application for leave to appeal—Act, s 342(1) or (2)**

- (1) A respondent opposing an application for the full bench's leave to appeal under section 342(1) or (2) of the Act must file 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 to the proceeding within 21 days after the day the application is served or the further time the full bench may allow.

**143 Application to appeal to full bench from registrar—Act, s 342(6) or (7)**

- (1) An application to appeal from a decision of the registrar under section 342(6) or (7) of the Act must state the following—
  - (a) the name and last known address of each respondent or other party;
  - (b) the grounds of the appeal;
  - (c) that the decision appealed from is not a decision mentioned in section 287(10), 341(1) or 695 of the Act.
- (2) Subrule (1)(c) does not apply if—
  - (a) the decision appealed from is a decision mentioned in section 287(10) of the Act; and
  - (b) the appeal is made to the full bench as it was constituted when the general ruling under section 287 of the Act was made.

**144 Application to appeal from magistrate—Act, s 341(2) or 342(5)**

An application to appeal from a decision of a magistrate must—

- (a) be filed in the Magistrates Court at the place where the decision was made; and

- (b) state the grounds of the appeal.

*Note—*

An application to appeal must be in the approved form. See rules 4 and 8(1) and (4).

**145 Magistrate may order appellant’s release from custody**

- (1) This rule applies to an appellant to an appeal from a decision of a magistrate.
- (2) If the appellant is in custody only in relation to the subject matter of the proceeding in which the decision was made, a magistrate may order the appellant’s release from custody.

**146 Form of arrest warrant—Act, s 341(4)**

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

**147 Striking out application to appeal by released appellant after at least 2 months delay**

- (1) This rule applies if—
  - (a) an application to appeal from a decision of a magistrate has been filed; and
  - (b) the appellant has been released from custody under rule 145; and
  - (c) no action has been taken in relation to the application by the appellant for at least 2 months since the later of the following—
    - (i) the registrar’s receipt of the application;
    - (ii) the last action taken in the application.
- (2) The registrar may, by notice, require the appellant to show cause in writing, within 21 days after the day the notice is given, why the application to appeal should not be struck out.

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- (3) The notice must state that the application may be struck out if the appellant does not show cause within the time stated in the notice.
- (4) The appellant's response to the notice to show cause must state the following—
  - (a) the steps taken by the appellant in the proceeding in which the decision appealed from was made;
  - (b) an explanation for the circumstances of the delay;
  - (c) the steps (including a timetable) proposed to be taken to progress the proceeding;
  - (d) any prejudice suffered or likely to be suffered by another party to the proceeding if the proceeding is not struck out;
  - (e) the merits of the proceeding;
  - (f) 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 to appeal;
  - (b) list the matter of showing cause for hearing before the court, with or without directions;
  - (c) list the application to appeal for hearing, with or without directions;
  - (d) make another order dealing with the application to appeal 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 to appeal;
  - (b) list the application to appeal for hearing, with or without directions;
  - (c) make another order dealing with the application to appeal the court considers appropriate.



- (7) The striking out of the application to appeal under this rule 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 to appeal is struck out under this rule, the registrar must give the parties notice that the court or registrar has struck out the application.

**148 Clerk of Magistrates Court to send documents to registrar**

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

- (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 magistrate;
- (f) the magistrate's decision.

**Part 6 General employment conditions**

**149 Application for order for payment instead of long service leave**

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

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

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**150 Application for order for payment of proportionate payment for long service leave**

- (1) This rule applies to an application under section 278 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) of the Act.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the grounds on which the application is made.

**151 Application for order ensuring equal remuneration for work of equal or comparable value**

- (1) An application for an order under chapter 2, part 5 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**

**152 Application for reinstatement**

- (1) An application for reinstatement under section 74(1) of the Act must—
  - (a) be filed; and
  - (b) be 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

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

### **153 Discontinuing application for reinstatement**

- (1) This rule applies to an application for reinstatement under section 74(1) 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 75 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.

### **154 Application for compensation order**

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

### **155 Application for order about severance allowance and other separation benefits**

- (1) An application for an order under section 87 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.

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**156 Application for order for contravention of Act, s 90**

- (1) An application for an order under section 90(3) of the Act must be in the non-chapter 12 approved form.
- (2) An affidavit contained in or accompanying the application must state—
  - (a) the facts it is alleged constitute the contravention of section 90(1) or (2) of the Act; and
  - (b) 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—the name of the organisation.

**157 Application for order for contravention of Act, s 90A**

- (1) An application for an order under section 90A(3) of the Act must be in the non-chapter 12 approved form.
- (2) An affidavit contained in or accompanying the application must state—
  - (a) the facts it is alleged constitute the contravention of section 90A(1) or (2) of the Act; and
  - (b) if the application is made by an organisation that is to be affected by the order—the name of the organisation.

## **Part 8 Freedom of association**

**158 Application for exemption from membership**

An application for exemption from membership of an organisation on the grounds of a person's conscientious beliefs under section 111 of the Act must be by way of a letter to a magistrate or the registrar stating the following—

- (a) the applicant's full name;

- (b) the applicant's private address;
- (c) the applicant's private and business telephone numbers;
- (d) the applicant's occupation;
- (e) the name and address of the business of the applicant's employer;
- (f) the name of the organisation for which the applicant is seeking the exemption from membership;
- (g) the grounds on which the application is made;
- (h) whether the applicant has been issued with an exemption certificate within the last 12 months.

### **159 Application for order about prohibited conduct**

- (1) An application for an order under chapter 4, part 4 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 reason alleged; and

*Note—*

*Engaging in* and *prohibited reason* are defined in the Act, section 104.

- (c) if the application is made by an industrial association of which an entity mentioned in section 117(a) of the Act is a member or is eligible to become a member—that the entity is a member, or is eligible to become a member, of the industrial association.

## **Part 9 Awards**

### **160 Application to make, amend or repeal awards**

An application to make, amend or repeal an award under section 125(2)(b) of the Act must be in the non-chapter 12 approved form.

### **161 Application to make or amend awards that relate to remuneration of employees**

- (1) This rule applies to an application under section 125(2)(b) of the Act to make or amend an award that relates to remuneration of employees.
- (2) An affidavit contained in or accompanying the application must state the facts relied on to show that the award or amendment provides for equal remuneration for male and female employees for work of equal or comparable value.

### **162 Application for exemption**

- (1) An application under section 132(1) 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.

### **163 Application for order fixing minimum wages and employment conditions for apprentices and trainees**

An application under section 137(4)(b) of the Act for an order fixing minimum wages and employment conditions for apprentices or trainees must be in the non-chapter 12 approved form.

**164 Application for order about tools**

An application under section 138(3)(b) of the Act for an order requiring an apprentice's employer to provide the apprentice with tools or a tool allowance must be in the non-chapter 12 approved form.

**165 Application for order for employees in labour market program**

An application under section 140(3)(b) of the Act for an order fixing wages and employment conditions for employees who participate in a labour market program must be in the non-chapter 12 approved form.

**166 Application for order applying to vocational placement**

An application under section 140A(2)(b) of the Act for an order fixing remuneration and conditions that apply to the vocational placement of a student must be in the non-chapter 12 approved form.

## **Part 10 Certified agreements**

**167 Advice and notice in relation to a project agreement**

- (1) Written advice to the commission under section 143(2)(b) of the Act must be filed in the approved form before negotiations begin.
- (2) Written notice given to the commission under section 143(4)(b) of the Act must be filed in the approved form.

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### **168 Request for help to make certified agreement**

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

### **169 Request for arbitration**

For section 149(1)(c) 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 conciliation has been unsuccessful; and
- (c) contain a form of consent to arbitration signed by all the negotiating parties.

### **170 Application to revoke determination**

- (1) For section 150(4) of the Act, an application to revoke a determination under section 149 of the Act must be in the approved form.
- (2) The application must be accompanied by an affidavit by the employer, or an employee 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 proposed to be revoked; and
  - (c) that the application has been given to all of the employees to whom the determination applies, and the persons who are bound by the determination.

### **171 Application for certificate as to requested representation**

- (1) An application under section 152(1) or (2) 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 made under section 152(1) of the Act by an employee organisation in relation to a proposed certified agreement must—
- (a) state the following—
    - (i) the name, address and membership number of each employee who has requested the organisation, under section 144 of the Act, to represent the employee in negotiating with the employer about the proposed agreement;
    - (ii) the date of the request;
    - (iii) the calling of each employee;
    - (iv) the name of the proposed certified agreement; and
  - (b) if the request to represent the employee is written—have attached a copy of the request.
- (3) An applicant under section 152(1) of the Act must not serve an affidavit mentioned in subrule (2) on the employer.
- (4) An affidavit contained in or accompanying an application made under section 152(2) of the Act by an employer in relation to a proposed certified agreement must state the following—
- (a) the name and address of each employee who has withdrawn a request for the employee 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

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- (ii) stopped being a relevant employee after the request;
- (d) how the former relevant employee stopped being a relevant employee.

*Examples for paragraph (d)—*

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

## **172 Application for certification of agreement**

- (1) An application under section 153 of the Act 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 agreement and any information required to accompany the agreement under section 156(1)(f) of the Act; and

*Note—*

See the regulation, section 9.

- (d) if there is or was a certified agreement covering some or all of the employees to be covered by the agreement, state—
  - (i) the name and agreement number of the certified agreement; and
  - (ii) whether the agreement replaces the existing certified agreement.
- (2) If the applicant wants a copy of the filed agreement returned, the applicant must give the registrar an extra copy.

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**173 Form of agreement for certification**

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

- (a) be on A4 (210mm x 297mm) 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 2cm margin on each side; and
- (g) have a 1.25cm 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 in electronic form.

**174 Application for decision about designated award**

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

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

**175 Application to extend certified agreement**

- (1) An application under section 168 of the Act to extend the nominal expiry date of a certified agreement must be in the approved form.

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- (2) The application must be accompanied by an affidavit stating—
  - (a) the steps taken to ensure the commission is satisfied as required under section 168(4) of the Act; and
  - (b) the steps taken to ensure section 185 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 file the original and 2 copies of the application and affidavit.
- (4) If the applicant wants a copy of the filed application returned, the applicant must give the registrar an extra copy.

## **176 Application to amend certified agreement**

- (1) An application under section 169 of the Act for approval of an amendment of a certified agreement must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—
  - (a) the name of the relevant award 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 under section 169(3)(a) of the Act; and
    - (ii) section 185 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 file the original and 2 copies of the application, amendment and affidavit.
- (4) If the applicant wants a copy of the filed application and amendment returned, the applicant must give the registrar an extra copy.
- (5) For an application to which section 170(2) of the Act applies, the affidavit accompanying the application must have attached as an exhibit a copy of the request under section 170(1)(a) of the Act for an amendment from 1 or more employees to the employer.

**177 Notice to terminate certified agreement on or before its nominal expiry date and application for approval of termination**

- (1) A notice under section 172(1) of the Act to terminate a certified agreement 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—
  - (a) be in the approved form; and
  - (b) be accompanied by an affidavit stating that a valid majority of the relevant employees at the time approve the agreement's termination.

**178 Application to terminate certified agreement after its nominal expiry date and notice of intention to apply**

- (1) An application under section 173(1) of the Act to terminate a certified agreement must be in the approved form.
- (2) A notice under section 173(2) of the Act of a person's intention to apply to terminate a certified agreement must be in the approved form.

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### **179 Notice of giving of authorisation of industrial action**

A notice under section 177(1)(c) of the Act of the giving of an authorisation of industrial action must be in the approved form.

## **Part 11 Industrial disputes**

### **180 Notice of industrial dispute**

- (1) A notice under section 229(2) of the Act must be in the approved form and state the following—
  - (a) the issues involved;
  - (b) the name, telephone number and fax number (if any) of the contact person for each party to the dispute;
  - (c) the industrial instruments affected;
  - (d) whether the party giving the notice is requesting that the commission hold a conference;
  - (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 12 and 13 do not apply to the notice.

### **181 Mediation by commission**

- (1) The steps the commission may take as mediator in an industrial cause under section 231 of the Act include conferring with the parties to the cause to the extent necessary—
  - (a) to help the parties resolve the matter or dispute; or

- (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 industrial 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—
    - (i) by an order of the commission; or
    - (ii) in 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 under chapter 7, part 2 of the Act.

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## **182 Notice to show cause**

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

## **183 Application for secret ballot**

An application for a direction under section 235 of the Act to conduct a secret ballot must be in the non-chapter 12 approved form.

## **184 Conducting secret ballot**

- (1) This rule provides for the things to be done under section 285(2)(b) of the Act for the conduct of a secret ballot.
- (2) Unless the commission otherwise directs, 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 544 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 with conducting the ballot; and
  - (b) appoint a person mentioned in 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 returning officer 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.
- (9) The returning officer or deputy returning officer must, as soon as practicable after the poll closes, count the votes received.
- (10) The returning officer must keep all voting papers, rolls and documents used at the ballot for at least 1 year.

**185 Application for order for contravention of Act, s 238**

- (1) An application for an order under section 239 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 238 of the Act.

## **Part 12 Records and wages**

**186 Application for issue of an authority**

- (1) An application for an authority under section 364 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.

**187 Application to revoke, suspend or attach conditions to authority**

An application under section 365(1) of the Act relating to an authorised industrial officer must be in the non-chapter 12 approved form and state—

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- (a) the condition of the officer's authorisation that was allegedly breached; or
- (b) the facts it is alleged constitute a contravention of section 372(2) of the Act; or
- (c) the facts of how the officer allegedly exercised the officer's power to enter in an unreasonable or vexatious way; or
- (d) the facts of how the officer allegedly made unreasonable, vexatious or inappropriate use of information obtained from inspection of a record made available because of the officer's power as an authorised industrial officer.

## **Part 13                      Fees charged by private    employment agents**

### **188      Application for order for repayment of fee**

An application under section 408F(1) of the Act for an order for the repayment of a fee received by a private employment agent must—

- (a) be in the approved form; and
- (b) state the facts it is alleged constitute a contravention of section 408D(1) or (2) of the Act.

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## **Part 14                    Industrial organisations**

### **Division 1                Registration**

#### **189    Application for registration**

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

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

#### **190    Application to change callings**

An application to change the list of callings of an organisation under section 427 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
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application; and
- (f) have attached a copy of a resolution passed in accordance with the organisation's rules agreeing to the change.

*Note—*

See also the regulation, sections 17 and 18.

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### **191 Notice of objection**

A notice of objection under section 418(1)(b) of the Act or section 25(5) of the regulation must be in the approved form.

*Note—*

See also division 4 and the regulation, section 26.

### **192 Answering objections**

A written response under section 27 of the regulation by an applicant to an objection must be in the approved form.

## **Division 2 Election rules**

### **193 Application for approval for ballot not to be a postal ballot**

- (1) An application to the registrar under section 447(1) of the Act for an approval for a ballot to decide the result of an organisation's elections for its elected officers not to be a postal ballot must be in the chapter 12 approved form.
- (2) The application must also—
  - (a) include particulars of the proposed amendments to the organisation's rules that provide for secret ballots that are not postal ballots; and
  - (b) state that the proposed amendments of the rules are not contrary to the Act or to law; and
  - (c) show how the amendments were 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

- (f) have attached a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendments.

*Note—*

See also the regulation, section 17.

**194 Application for cancellation of approval for ballot not to be a postal ballot**

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

**Division 3 Validity of, and compliance with, rules**

**195 Application about organisation's rules under Act, s 459**

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

**Division 4 Amendment of rules**

*Note—*

See rules 191 and 192 and the regulation, part 8, division 3 in relation to objections to applications mentioned in this division.

**196 Application for approval to amend name under Act, s 472**

An application for an order under section 472 of the Act must be in the chapter 12 approved form.

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**197 Application for approval to amend name under Act, s 473**

An application for an order under section 473 of the Act approving a name amendment 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) state that the amended name is not the same as another organisation's name or so similar to another organisation's name 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.

*Note—*

See also the regulation, sections 17 and 18.

**198 Application to approve eligibility rule amendment**

(1) An application for an order under section 474 of the Act approving an eligibility rule amendment 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.

*Note—*

See also the regulation, sections 17 and 18.

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- (2) The application must have attached a schedule divided into 3 columns containing—
- (a) in column 1—the present registered eligibility rule; and
  - (b) in column 2—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; and
  - (c) in column 3—the proposed new eligibility rule, incorporating the amendment detailed in column 2.

**199 Application for approval of other amendment to rules under Act, s 478**

An application for the registrar's approval under section 478 of the Act of a proposed amendment to an organisation's rules 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) in column 1—the present registered rule; and
  - (ii) in column 2—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; and
  - (iii) in column 3—the proposed new rule, incorporating the amendment detailed in column 2; and
- (e) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment; and

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- (f) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application.

## **Division 5                      Conduct of elections**

### **200      Filing prescribed election information**

The information for the conduct of an election required to be filed in the registry under section 481 of the Act must be in the approved form.

*Note—*

See also the regulation, section 34.

## **Division 6                      Election inquiries**

### **201      Application for election inquiry**

An application for an election inquiry under chapter 12, part 8 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 is made; and
- (c) state the date the prescribed information for the election was filed under section 481(1) of the Act; and
- (d) if the election has ended—state the date the election ended.



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## **Division 7                      Registers**

### **202      Officers register**

The copy of an organisation's officers register required to be filed under section 547 of the Act before 31 March in each year must—

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

*Note—*

For the meaning of *officer* of an organisation, or branch of an organisation, see the Act, section 409.

## **Division 8                      Exemptions**

### **203      Application for exemption if federal ballot held**

An application under section 580 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 (Registered Organisations) Act for the election held by the applicant's counterpart federal body, certified by the president or secretary of the body as being a true copy.

*Note—*

See also the regulation, section 20.

### **204      Application for exemption from keeping members register or officers register**

An application under section 582 of the Act for an exemption from keeping a members register or officers register must be in the chapter 12 approved form.

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**205 Application for exemption from accounting or audit provisions**

An application under section 586 of the Act for an exemption from the whole or part of chapter 12, part 12, divisions 2 to 4 of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of the most recent audit report or relevant accounts for the applicant's counterpart federal body lodged under the Commonwealth (Registered Organisations) Act, section 268, 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 lodging of the documents in the registry of the Australian commission; and
- (d) state that the applicant's counterpart federal body is not a body for which a certificate has been issued under the Commonwealth (Registered Organisations) Act, section 270.

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

- (1) An application under section 590 of the Act for an exemption from the whole or part of chapter 12, part 12, divisions 2 to 4 of the Act 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.

**207 Application for exemption from requirement that electoral commission conduct election**

An application under section 594 of the Act for an exemption from the requirement that the electoral commission conduct particular elections must be in the chapter 12 approved form.

**Division 9 Amalgamations and withdrawals**

**Subdivision 1 Applications about ballots and objections**

**208 Application to submit proposed amalgamation to a ballot**

An application under section 62 of the regulation for an amalgamation ballot must be in the chapter 12 approved form.

*Note—*

See also the Act, section 619.

**209 Application to submit proposed withdrawal to a ballot**

An application under section 63 of the regulation for a withdrawal ballot must be in the chapter 12 approved form.

**210 Application for amalgamation ballot exemption—number of members**

An application under section 64 of the regulation 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.

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**211 Application for amalgamation ballot exemption—recognising federal ballot**

An application under section 65 of the regulation for an exemption from the requirement to hold an amalgamation ballot if the counterpart federal bodies of the organisations proposing to amalgamate have amalgamated must be in the chapter 12 approved form.

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

An application under section 66 of the regulation for an exemption from holding a withdrawal ballot must be in the chapter 12 approved form.

**213 Application for approval for alternative ballot that is not a postal ballot**

- (1) An application under section 67(1) of the regulation for approval for an amalgamation ballot that is not a postal ballot must be in the approved form.
- (2) An application under section 67(2) of the regulation for approval for a withdrawal ballot that is not a postal ballot must be in the approved form.

**214 Notice of withdrawal**

A notice of withdrawal under section 68 of the regulation must be in the approved form.

**215 Notice of objection for amalgamations and ballot exemptions**

A notice of objection under section 74, 75 or 76 of the regulation must be in the approved form.

*Note—*

See also the regulation, section 77.

## **216 Answering objections**

A statement under section 78 of the regulation in answer to a notice of objection served under section 77(5) of the regulation must be in the approved form.

## **Subdivision 2 Form of ballot papers—regulation, s 97**

### **217 Form of ballot paper**

A ballot paper for any of the following must be in the approved form—

- (a) a ballot for a proposed amalgamation;
- (b) a ballot for a proposed withdrawal.

## **Subdivision 3 Amalgamation or withdrawal ballot irregularities**

### **218 Application for a ballot inquiry**

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

*Note—*

See also the regulation, part 13, division 14, subdivision 1.

## **Division 10 Deregistration**

### **219 Application for deregistration**

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

[r 220]

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## **Division 11                    Statistical information**

### **220     Statistical information**

- (1) The court, commission or registrar may require an organisation to file returns of statistical information or other statistical information.
- (2) The requirement may be made in the way the court, commission or registrar considers appropriate.
- (3) The returns or other statistical information must be filed within 30 days of the requirement.

## **Part 15                            Industrial agreements**

### **221     Notice of intention to retire from agreement**

- (1) A notice under section 142 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) state the period, at least 30 days from the date of filing, at the end of which the party intends to retire.

*Note—*

The 1990 Act, section 142 (Retirement of parties from agreement). For the saving of the 1990 Act, see the Act, section 713(2).

- (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, at their usual or last known address.

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## Part 16                      General

### 222      **Student's work permit**

- (1) An application for a permit under section 695 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 be in the approved form.

### 223      **Aged or infirm person's permit**

- (1) Each of the following must be in the approved form—
  - (a) an application for a permit for an aged or infirm person under section 696(1) of the Act;
  - (b) notice of the application and of the hearing of any objection to the issue of the permit under section 696(4) of the Act;
  - (c) the permit.
- (2) An application to cancel a permit under section 696(6) of the Act must be in the non-chapter 12 approved form.

## Part 17                      Fees

### 224      **Fees in the court, commission or registry**

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

### 225      **Fees in Industrial Magistrates Court**

The fee for a complaint, claim mentioned in rule 101, summons or other process under the *Justices Act 1886* in an

[r 226]

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Industrial Magistrates Court is the fee, if any, that is payable for a similar process under the *Justices Act 1886*.

## **Part 18                      Miscellaneous**

### **226      Effect of failure to comply with rules**

- (1) A failure to comply with these rules is an irregularity and does not of itself render a proceeding, 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, the commission, a magistrate or the registrar may—
  - (a) set aside all or part of the proceeding; or
  - (b) set aside a step taken 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, magistrate or registrar considers appropriate.

### **227      Form of notices**

A notice required or permitted under these rules may be given orally if the court, the commission, a magistrate or the registrar gives leave.



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**228 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 filed document.
- (3) The registrar may require at least 7 days notice to produce the certified copy.

**229 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.

**230 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 in relation to the application for at least 1 year since the last action was taken in the application.
- (2) A party may only take further action on the application with an order of the court, commission or registrar.
- (3) An application for an order under subrule (2) must be in the approved form and state the following—
  - (a) the steps taken in the proceeding;
  - (b) an explanation for the circumstances of the delay;

[r 231]

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

### **231 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 in relation to the application for at least 1 year since the last action was taken in the application.
- (2) The registrar may, by notice, require the applicant to show cause in writing, within 21 days after the day the notice is given, why the application starting the proceeding should not be struck out.
- (3) The notice must state that the application may be struck out if the applicant does not show cause within the time stated in the notice.
- (4) The applicant's response to the notice to show cause must state the following—
  - (a) the steps taken in the proceeding;
  - (b) an explanation for the circumstances of the delay;
  - (c) the steps (including a timetable) proposed to be taken to progress the proceeding;
  - (d) any prejudice suffered or likely to be suffered by another party to the proceeding if the application is not struck out;
  - (e) the merits of the proceeding;

- (f) 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 of the application starting the proceeding under this rule 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 under this rule, the registrar must give the parties notice that the court, commission or registrar has struck out the application.

[r 232]

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## **232 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 with the president's approval.
- (2) However, the court or commission may deal with business arising during a vacation, if the court or commission considers it necessary.

# **Part 19 Repeal and transitional provisions**

## **Division 1 Repeal**

### **233 Repeal**

The Industrial Relations (Tribunals) Rules 2000, SL No. 329 are repealed.

## **Division 2 Transitional provisions**

### **234 Definition for div 2**

In this rule—

*commencement* means the commencement of this rule.

### **235 Continuance of proceedings**

- (1) This rule applies to a proceeding started, in the court or commission or before a magistrate or the registrar, but not completed, before the commencement.

- (2) On the commencement, the repealed *Industrial Relations (Tribunals) Rules 2000* continue to apply to the proceeding as if these rules had not been made.

**236 Continuance of practice notes**

- (1) This rule applies to a practice note—
- (a) issued by the court, commission or registrar before the commencement; and
  - (b) in force immediately before the commencement.
- (2) The practice note is taken to have been issued by the court, commission or registrar under rule 92.

**237 Continuance of appointment of lawyer or agent**

- (1) An appointment of a lawyer or agent made under section 319 of the Act before the commencement continues.
- (2) Action may be taken in relation to the appointment as if the appointment was made under these rules.

**238 References to Industrial Relations (Tribunals) Rules 2000**

In subordinate legislation or a document, a reference to the *Industrial Relations (Tribunals) Rules 2000* may, if the context permits, be taken to be a reference to these rules.

## **Schedule 1            Fees in the court, commission    or registry**

	rule 224
	\$
1    Filing—	
(a) an application made by an employee, under section 74 of the Act, for reinstatement . . . . .	49.80
(b) an application made by a party or inspector, under section 276 of the Act, to amend or declare void a contract or part of a contract . . . . .	49.80
(c) an application for directions, as mentioned in section 339 of the Act, relating to an application mentioned in paragraph (a) or (b) . . . . .	17.50
2    Searching for, or inspecting, a filed document . . . . .	4.85
3    Photocopying a filed document, for each page . . . . .	0.50

## Schedule 2 Dictionary

### rule 3

***appeal Act*** means—

- (a) the *Building and Construction Industry (Portable Long Service Leave) Act 1991*; or

*Note—*

See also the *Building and Construction Industry (Portable Long Service Leave) Regulation 2002*.

- (b) the *Coal Mining Safety and Health Act 1999*; or
- (c) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*; or
- (d) the *Electrical Safety Act 2002*; or
- (e) the *Electricity Act 1994*; or

*Note—*

See also the *Electricity Regulation 2006*, chapter 9, part 2, division 2.

- (f) the *Mining and Quarrying Safety and Health Act 1999*; or
- (g) the *Petroleum and Gas (Production and Safety) Act 2004*; or
- (h) the *Workers' Compensation and Rehabilitation Act 2003*.

***approved form*** means a form approved under section 708 of the Act.

***association*** includes an organisation that is not an employee or employer organisation.

***chapter 12 approved form*** means an approved form for use for applications under chapter 12 of the Act.

***commission*** includes the full bench.

***directions order—***

- (a) of the court, commission or registrar—see rule 41; or
- (b) of a magistrate—see rule 113.

**enabling Act** means—

- (a) an appeal Act; or
- (b) the *Child Employment Act 2006*; or
- (c) the *Pastoral Workers' Accommodation Act 1980*; or
- (d) the *Private Employment Agents Act 2005*; or
- (e) the *Trading (Allowable Hours) Act 1990*; or
- (f) the *Vocational Education, Training and Employment Act 2000*; or
- (g) the *Workers' Accommodation Act 1952*; or
- (h) the *Work Health and Safety Act 2011*.

**filed** means—

- (a) for an application to appeal from a decision of a magistrate—filed under rule 144(a); or
- (b) otherwise—filed with the registrar.

**leave to appeal** means leave under section 342 of the Act.

**non-chapter 12 approved form** means an approved form for use for applications other than under chapter 12 of the Act.

**party**, for part 3, may include a person ordered or permitted to appear in a proceeding.

**regulation** means the *Industrial Relations Regulation 2011*.

**stay of a decision under appeal or review** means any of the following—

- (a) an order that a decision be stayed under section 347 of the Act;
- (b) a stay of a decision under the *Coal Mining Safety and Health Act 1999*, section 239 or a stay of a directive or review decision under section 245 of that Act;
- (c) a stay of a decision under the *Electrical Safety Act 2002*, section 171 or 174;



- (d) a stay of a decision under the *Mining and Quarrying Safety and Health Act 1999*, section 219 or a stay of a directive or review decision under section 225 of that Act;
- (e) a stay of a decision under the *Petroleum and Gas (Production and Safety) Act 2004*, section 826;
- (f) an order that a decision be stayed under the *Vocational Education, Training and Employment Act 2000*, section 231;
- (g) a stay of a decision under the *Work Health and Safety Act 2011*, section 229C.

**WHS review** means an external review by the commission under the *Work Health and Safety Act 2011*, section 229.

## 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 July 2013. Future amendments of the *Industrial Relations (Tribunals) Rules 2011* 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 version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
1	none	1 January 2012	
1A	2012 SL No. 57	1 July 2012	
1B	2012 SL No. 103	20 July 2012	
1C	2012 Act No. 22	29 August 2012	

Current as at	Amendments included	Notes
21 June 2013	2013 SL No. 98	
1 July 2013	2013 SL No. 73	

## 5 List of legislation

### *Regulatory impact statements*

For subordinate legislation that has a regulatory impact statement, specific reference to the statement is included in this list.

### *Explanatory notes*

All subordinate legislation made on or after 1 January 2011 has an explanatory note. For subordinate legislation made before 1 January 2011 that has an explanatory note, specific reference to the note is included in this list.

### **Industrial Relations (Tribunals) Rules 2011 SL No. 237**

made by the Governor in Council on 24 November 2011

notfd gaz 25 November 2011 pp 603–6

rr 1–2 commenced on date of notification

remaining provisions commenced 1 January 2012 (see r 2)

[exp 1 September 2022](#) (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) 2012 SL No. 57**

notfd gaz 25 May 2012 pp 149–50

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2012 (see s 2)

**Vocational Education, Training and Employment and Other Legislation Amendment Regulation (No. 1) 2012 SL No. 103 pts 1, 11**

notfd gaz 20 July 2012 pp 863–7

commenced on date of notification

**Public Service and Other Legislation Amendment Act 2012 No. 22 s 1, pt 6**

date of assent 29 August 2012

commenced on date of assent

**Industrial Relations (Tribunals) Amendment Rule (No. 1) 2013 SL No. 73**

notfd gaz 31 May 2013 pp 160–5

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2013 (see s 2)

**Industrial Relations (Tribunals) Amendment Rule (No. 2) 2013 SL No. 98**

notfd gaz 21 June 2013 pp 503–7

commenced on date of notification

## 6 List of annotations

### Starting proceedings

r 8 amd 2013 SL No. 73 s 4

### Service of documents

r 28 amd 2013 SL No. 73 s 5

### Application to recover unpaid wages and superannuation contribution etc.

r 76 amd 2013 SL No. 73 s 6

### Application to refer matter to full bench

r 79 amd 2012 Act No. 22 s 27

### Application for order—Electrical Safety Act 2002, s 54

r 111 amd 2013 SL No. 73 s 7

### PART 3A—TRANS-TASMAN PROCEEDINGS

pt hdg ins 2013 SL No. 98 s 3

#### Division 1—Preliminary

div 1 (rr 123A–123C) ins 2013 SL No. 98 s 3

#### Division 2—Attendance notices

div 2 (rr 123D–123F) ins 2013 SL No. 98 s 3

**Division 3—Registration and enforcement of NZ judgments**

**div 3 (rr 123G–123K)** ins 2013 SL No. 98 s 3

**Division 4—Remote appearances**

**div 4 (r 123L)** ins 2013 SL No. 98 s 3

**Record for particular appeals and WHS reviews**

**r 133** amd 2012 SL No. 103 s 41

**Service of applications**

**r 135** amd 2012 SL No. 103 s 42

**Service of application if respondent is Skills Queensland**

**prov hdg** amd 2012 SL No. 103 s 43(1)

**r 136** amd 2012 SL No. 103 s 43(2)–(4)

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

sub 2012 SL No. 57 s 4; 2013 SL No. 73 s 8

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