



Queensland

*Industrial Relations Act 2016*

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

**Current as at 5 August 2022**

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Queensland

# Industrial Relations (Tribunals) Rules 2011

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# Industrial Relations (Tribunals) Rules 2011

## 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.

*Note—*

From 1 March 2017, these rules continue to have effect as if they were made under section 551 of the Act—see section 1025 of the Act.

### 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—
    - (i) a notice of appeal under an appeal Act; and
    - (ii) a complaint referral; 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.

## **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 261 of the Act; or
  - (f) to a proceeding started by a complaint referral.
- (3) For these rules, each of the following is a document starting a proceeding—
- (a) an application to appeal;
  - (b) a notice of appeal under an appeal Act;
  - (c) a complaint referral.
- (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 complaint referral must be in the approved form.
- (6) 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

[r 9]

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- (b) for a document issued by the court, commission or registrar—is issued.

*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.

- (7) 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**

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.

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**12 Document starting proceeding, or application in existing proceeding, to state contact details**

- (1) Unless otherwise provided by these rules, a document starting a proceeding, or an application in an existing proceeding, must not be filed unless it states—
  - (a) the applicant’s residential or business address; and
  - (b) the applicant’s 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); and
  - (e) the applicant’s email address (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, email address and fax number (if any).

*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.

### **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.
- (3) If an imaged document is to be electronically filed—

- (a) the paper form of the document from which the imaged document is created must comply with subrule (1); and
  - (b) the imaged document must be formatted in a way that would result in the document complying with subrule (1) if a paper copy were made of the imaged document.
- (4) If a document, other than an imaged document, is to be electronically filed, the document must be formatted in a way that would result in the document complying with subrule (1) if a paper copy were made of the document.
- (5) In this rule—
- imaged document* means a document in electronic form created by scanning or otherwise imaging the document in its paper form.

### **13A Signing of particular documents for filing**

- (1) Unless these rules or a directions order of the court, commission or registrar otherwise requires, a document, other than a written submission or an affidavit or exhibit attached to another document, for filing by a party must be dated and signed by—
- (a) the party; or
  - (b) if the party has a lawyer or agent—the lawyer or agent.
- (2) A requirement under these rules to sign a document may be satisfied for a document, other than a statutory declaration, in electronic form—
- (a) if the document is an approved form—by signing in the way required by the approved form; or
  - (b) otherwise—by attaching the person’s signature to the document by electronic means by, or at the direction of, the person required to sign the document.

## **14 Filing of documents**

- (1) A document is filed when the appropriate fee (if any) is paid and the document is stamped in the registry.
- (2) 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; or
  - (d) a practice direction issued under these rules.

*Note—*

See, for example, sections 261, 644 and 676 of the Act 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 fee, if any, being paid; or
- (d) for an appeal from a decision of a magistrate—as required under rule 144.

## **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.

### **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.



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## **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 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.

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

*relevant address*, of a person to be served, means—

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

## **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**

The registrar may serve a copy of a directions order on the party who applied for the directions order by any of the following means—

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- (a) if the party has given an email address under these rules—emailing the order to the party;
- (b) if the party has given a fax number under these rules—faxing the order to the party;
- (c) posting the order to—
  - (i) the party’s address for service; or
  - (ii) for a party who is an individual who does not have an address for service—
    - (A) the party’s last known place of business or residence; or
    - (B) if the proceeding is brought by or against the party in the name of a partnership—the principal or last known place of business of the partnership; or
  - (iii) for a party that is a corporation, organisation or association that does not have an address for service—its head office or its principal or registered office;
- (d) giving the order to the party by an electronic means stated in a practice direction issued under these rules.

### **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.

### **32 Substituted service or notice of document**

- (1) An application for an order under section 528(2) of the Act must be in the approved form.
- (2) The court, commission or registrar may state in an order made under section 528(2)(b) of the Act the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.

### **33 Informal service**

- (1) This rule applies if—
  - (a) for any reason, a document is not served under section 528 of the Act or 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.
- (2) 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—
  - (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.

### **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.

### **38A Special requirements for service by email**

A document served by email must state the following in the body of the email—

- (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 of the document transmitted, including any cover page attached to the document;
- (e) the email address 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 or directions order.

### **39 Special requirements for service by fax**

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 or directions order.

### **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.
- (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
  - (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.

#### **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 directly 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 file the response and immediately serve a copy of it 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—

- (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

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- (b) contain the file number of the proceeding; and
- (c) have a certificate, in the approved form, attached to it, signed by the persons swearing and 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 C.D. 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.

#### **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

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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) A member of the commission or the registrar may refuse a request of a party to issue an attendance notice requiring a person, who is a non-party to the proceeding, to produce a stated document if satisfied—
  - (a) the party could require the production of the document under subdivision 7A; and
  - (b) the party has not made reasonable attempts, under subdivision 7A, to obtain the document.
- (3) On the direction of a member of the commission, the registrar must issue an attendance notice to a person.
- (4) 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

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- (d) be accompanied by a draft of the attendance notice, in the approved form, that is requested.
- (5) An attendance notice, other than an attendance notice for a compulsory conference, may only be directed to a single person.
- (6) 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 directly 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 documents or things produced voluntarily or under attendance notice**

- (1) This rule applies in relation to a document or thing produced to the court, commission or registrar, whether produced voluntarily or under an attendance notice.
- (2) The document or thing may be inspected by the court, commission or registrar.



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- (3) The registrar may allow a party to the proceeding to inspect the document or thing unless 1 or more of the following persons objects to the inspection under rule 60A—
    - (a) the person who produced the document or thing;
    - (b) another party to the proceeding;
    - (c) another person with a sufficient interest in the document or thing.
  - (4) A person other than a party may inspect the document or thing only if—
    - (a) the court or commission gives leave for the inspection; and
    - (b) the inspection is in accordance with the leave.
  - (5) Subrule (4) applies subject to rule 60A.
  - (6) Information obtained from the document or thing must not be made public without the permission of the court, commission or registrar.
  - (7) 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.

**60A Objecting to inspection of documents or things produced voluntarily or under attendance notice**

- (1) This rule applies in relation to a document or thing produced to the court, commission or registrar, whether produced voluntarily or under an attendance notice.
- (2) If the person producing the document or thing objects to it being inspected by a party to the proceeding, the person must, when producing the document or thing, give the registrar written notice of the objection and the grounds of the objection.
- (3) If a party to the proceeding, or a person having a sufficient interest in the document or thing, objects to the document or thing being inspected by another person, the party or person

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may give the registrar written notice of the objection and the grounds of the objection.

- (4) On receiving a notice of objection under subrule (2) or (3), the registrar—
  - (a) must give written notice of the objection to the party on whose behalf the attendance notice was issued; and
  - (b) must not allow any person to inspect, or further inspect, the document or thing.
- (5) The party on whose behalf the attendance notice was issued may, on reasonable notice to the person who gave the notice of objection, apply to the court or commission for a decision about the objection.

## **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 must pay the expenses and allowance to the person a reasonable period before the day the person is required to attend.
- (3) The court, commission or registrar may treat the failure of a party to pay the person's expenses or allowance under subrule (2) as a lawful excuse for failure to comply with the attendance notice.

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### **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, not less than 2 business days 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 on the person to whom it is directed.

*Note—*

For the ways in which an attendance notice may be served, see section 528 of the Act and rule 28.

## **Subdivision 7A Notices of non-party production**

### **64A Definitions for sdiv 7A**

In this subdivision—

**hearing**, for a proceeding, means the hearing of the originating application for the proceeding.

**industrial tribunal** means—

- (a) for a proceeding before the court—the court; or
- (b) for a proceeding before the commission—the commission; or
- (c) for a proceeding before the registrar—the registrar.

**non-party** see rule 64B(1).

**notice** means a notice of non-party production under rule 64B.

**originating application**, for a proceeding, means the application starting the proceeding.

*Note—*

For references to applications under this part, see rule 4.

## **64B Notice requiring non-party production**

- (1) A party to a proceeding may, by notice of non-party production, require a person who is not party to the proceeding (the **non-party**) to produce to the party, within 14 days after service of the notice on the non-party, a document—
  - (a) directly relevant to a matter in issue in the proceeding; and
  - (b) in the possession or under the control of the non-party; and
  - (c) that is a document the non-party could be required to produce at the hearing for the proceeding.
- (2) The party may not require production of a document if there is available to the party another reasonably simple and inexpensive way of proving the matter sought to be proved by the document.
- (3) The non-party must comply with the notice but not before the end of 7 days after service of the notice on the non-party.

- (4) The requirement, under this rule, for a non-party to produce a document is not an ongoing duty.

### **64C Form and service of notice**

- (1) A notice must—
- (a) state the matter in issue in the proceeding about which the document sought is directly relevant; and
  - (b) be in the approved form; and
  - (c) be served on the non-party.
- (2) However, the party may serve the non-party only after the party has served all other persons who are required to be served under rule 64D.

### **64D Others affected by notice**

- (1) The party must serve a copy of the notice on—
- (a) a person, other than a party and the non-party, about whom information is sought by the notice; and
  - (b) if the party knows the non-party does not own a document required to be produced—the owner of the document.
- (2) Subrule (1) does not apply if the party’s lawyer—
- (a) believes, on reasonable grounds, that a person who would otherwise be required to be served under subrule (1) is likely to fabricate evidence or perpetrate fraud if the person becomes aware of the notice; and
  - (b) has completed a certificate in the approved form stating that the lawyer has that belief and that the interests of justice are likely to be jeopardised if the person were served with the notice.
- (3) A certificate by the party’s lawyer under subrule (2) must be tendered to the industrial tribunal at the hearing for the proceeding.

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- (4) Further, subrule (1)(b) does not apply if, after reasonable inquiries, the party can not identify the owner of the document.
- (5) The party must write the name and address of anyone who must be served under this rule on the notice and on all copies of the notice.

### **64E Objection to production**

- (1) The non-party, or a person who has been served with a copy of the notice under rule 64D, may object to the production of some or all of the documents mentioned in the notice within 7 days after its service or, with the leave of the industrial tribunal, a later time.
- (2) Also, another person who would be affected by the notice and who has not been served may object to the production of some or all of the documents mentioned in the notice at any time with the leave of the industrial tribunal.
- (3) The objection must—
  - (a) be written; and
  - (b) be served on the party; and
  - (c) if the person objecting (the *objector*) is not the non-party—be served on the non-party; and
  - (d) clearly state the reasons for the objection.
- (4) The reasons may include, but are not limited to, the following—
  - (a) if the objector is the non-party—the expense and inconvenience likely to be incurred by the non-party in complying with the notice;
  - (b) the lack of relevance to the proceeding of the documents mentioned in the notice;
  - (c) the lack of particularity with which the documents are described;
  - (d) a claim of privilege;

- (e) the confidential nature of the documents or their contents;
- (f) the effect production would have on any person;
- (g) if the objector was not served with the notice—the fact that the objector should have been served.

#### **64F Objection stays notice**

Service of an objection under rule 64E operates as a stay of the notice.

#### **64G Industrial tribunal's decision about objection**

- (1) Within 7 days after service of an objection under rule 64E, the party may apply to the industrial tribunal for a decision about the objection.
- (2) The industrial tribunal may make any order it considers appropriate including, but not limited to, an order—
  - (a) lifting the stay; or
  - (b) varying the notice; or
  - (c) setting aside the notice.
- (3) Unless the industrial tribunal otherwise orders, each party to an application to decide an objection must bear the party's own costs of the application.

#### **64H Production and copying of documents**

- (1) Unless the operation of a notice is stayed, and subject to any order under rule 64G(2), the non-party must produce the document specified in the notice for inspection by the party at the place of business of the non-party, or the non-party's lawyer, within ordinary business hours or at another place or time agreed by the party and the non-party.
- (2) If the non-party does not comply with subrule (1), the party may apply to the industrial tribunal who may order

compliance and make another order the industrial tribunal considers appropriate.

- (3) The party may copy a document produced under this subdivision.

## **64I Reasonable expenses of production**

- (1) Subject to rule 64G(3), the party must pay the non-party's reasonable expenses of producing a document.
- (2) Within 1 month after producing a document, the non-party must give to the party written notice of the non-party's reasonable expenses of producing it.
- (3) Unless the industrial tribunal otherwise orders, the party may apply to the registrar within 1 month after receiving written notice under subrule (2) for assessment of the expenses.

## **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 made under section 476 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.

## **67 Rehearing of proceeding heard in respondent's absence**

- (1) This rule applies if the commission makes an order under section 475 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 proceedings**

### **68 Written request for discontinuance**

- (1) An applicant for a proceeding may ask to be allowed to discontinue the proceeding by filing a written request in the approved form.
- (2) When filing the request, the applicant must serve a copy of the request on each of the other parties to the proceeding.

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- (3) A party may object to the discontinuance by notice to the registrar within 14 days after being served with the request to discontinue.
- (4) If no party objects within the 14 days, the court, commission or registrar may allow the proceeding to be discontinued.
- (5) If a proceeding is allowed to be discontinued, the court, commission or registrar must note the file to that effect.
- (6) If a party objects to the discontinuance under subrule (3), the court, commission or registrar may allow or disallow the request for discontinuance on the terms the court, commission or registrar considers appropriate.

## **69 Oral request for discontinuance**

- (1) An applicant in a proceeding may, at any time, ask to be allowed to discontinue the proceeding by oral application.
- (2) The court, commission or registrar may 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 545 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 under the *Uniform Civil Procedure Rules 1999*, schedule 2; or
  - (b) for a proceeding before the court or the full bench—the costs payable on the scale of costs for the Supreme

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Court and District Court under the *Uniform Civil Procedure Rules 1999*, schedule 1; or

- (c) 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 546**

A certificate under section 546 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 463 of the Act must be in the 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 465 of the Act must be in the 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) An application to amend or declare void a contract under section 471 must be in the 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.

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

- (a) has not made an application under section 317 of the Act for the same matter; and

- (b) is not a person mentioned in section 472(2)(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 473**

An application for an injunction under section 473 of the Act must—

- (a) be in the 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 475 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 section 476(2) of the Act in relation to the employee, has not made an application under section 379, 386 or 396 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 section 476(1) of the Act, a claim can not be made for more than \$50,000.

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- (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 for an order about a demarcation dispute under section 479 of the Act must be in the approved form.

**78 Application to reopen**

An application to reopen proceedings under section 484 of the Act must be in the 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 486(4) of the Act must be in the approved form, unless the president or registrar allows otherwise.

**80 Application for interpretation of industrial instrument**

- (1) An application for an interpretation of an industrial instrument under section 467 of the Act must—
- (a) be in the 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 1A Applications and proceedings under Anti-Discrimination Act 1991**

### **80A Application for exemption or renewal of exemption—Anti-Discrimination Act 1991, s 113**

An application under the *Anti-Discrimination Act 1991*, section 113 for an exemption, or renewal of an exemption, from the operation of a specified provision of that Act must—

- (a) be in the approved form; and
- (b) state—
  - (i) the provision of that Act from which an exemption is sought; and
  - (ii) the period, or further period, for which the exemption is sought; and
  - (iii) the person, people or class of people for whom the exemption is sought; and
  - (iv) the grounds on which the application is made; and
- (c) be accompanied by a statement made by, or for, the applicant setting out detailed information in support of the application.

**80B Application for order protecting complainant's interests—Anti-Discrimination Act 1991, s 144**

- (1) This rule applies if a person applies to the commission for an order under the *Anti-Discrimination Act 1991*, section 144 in relation to a complaint under that Act.
- (2) The application must be in the approved form and served at least 2 days before the commission hears the application.
- (3) The applicant must also serve the application and any documents filed in support of the application on—
  - (a) if the applicant is the complainant—the human rights commissioner; or
  - (b) if the applicant is the human rights commissioner—the complainant.
- (4) If the commission is satisfied exceptional circumstances exist in relation to the application, the commission may hear the application even if the applicant has not complied with rule 24 or subrule (3).
- (5) In this rule—  
*complainant* see the *Anti-Discrimination Act 1991*, schedule.

**80C Giving copy of order protecting complainant's interests—Anti-Discrimination Act 1991, s 144**

- (1) If the commission makes an order under the *Anti-Discrimination Act 1991*, section 144 in relation to a complaint under that Act, the applicant must promptly give a copy of the order to—
  - (a) each party to the proceeding; and
  - (b) the human rights commissioner, if the applicant is not the human rights commissioner; and
  - (c) any other person the commission directs to be given a copy of the order.



- (2) However, the commission may order the registrar to give a copy of the order to a person mentioned in subrule (1) or may order that the copy be given to the person in a particular way.
- (3) If the commission orders the registrar to give a copy of the order to a person mentioned in subrule (1), the applicant is exempt from the requirement to give the order to the person under the subrule.

**80D Application for review of decision about complaint lapsing—Anti-Discrimination Act 1991, s 169**

- (1) This rule applies to an application for a review of the human rights commissioner's decision about a complaint lapsing under the *Anti-Discrimination Act 1991*, section 169.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by a written statement by the applicant of the reasons why the human rights commissioner's decision should be changed.

**80E Commission to give human rights commissioner and parties copy of reasons for decision**

- (1) This section applies if the commission gives a party to a proceeding under the *Anti-Discrimination Act 1991* written reasons for a decision in the proceeding.
- (2) The commission must also give a copy of the reasons to—
  - (a) each other party to the proceeding who has not already been given a copy of the reasons; and
  - (b) the human rights commissioner, if the commissioner has not already been given a copy of the reasons.

## **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 approved form; and
- (b) state the facts relied on.

### **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 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 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.

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**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.

**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

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

## **88A Conducting secret ballot**

- (1) This rule provides for the things to be done under section 489(2)(b) of the Act for the conduct of a secret ballot.

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- (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 341 or 732 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.

**88B Notice of appeal to human rights commissioner—Anti-Discrimination Act 1991**

- (1) This rule applies if—

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- (a) a person appeals against a decision of the commission made under the *Anti-Discrimination Act 1991*; and
  - (b) the person is not the human rights commissioner.
- (2) The registrar must give notice of the appeal to the human rights commissioner.

**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.

*Note—*

See also rule 10 and 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 directions**

The court, commission or registrar may, by notice published on the QIRC website, issue practice directions 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.

## **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.

## **94A Disposal of exhibits**

- (1) This rule applies to an exhibit held by the court, commission or registrar in a finalised proceeding.
- (2) The registrar may give notice in the approved form to a party, an agent for a party or any other person who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.
- (3) If the exhibit is not collected from the registry within 3 months after the notice is given, the registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.

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- (4) The court, commission or registrar may, at any time, make an order about the return, destruction or other disposal of an exhibit.
- (5) If the registrar returns, destroys or otherwise disposes of an exhibit under this rule, the registrar must ensure a note is placed on the file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.
- (6) In this rule—  
*finalised proceeding* means a proceeding—
  - (a) that has been discontinued; or
  - (b) in relation to which a party has notified the registrar that the proceeding has been settled or otherwise ended other than by discontinuance or the granting of final relief; or
  - (c) that has been struck out under rule 185A or 231; or
  - (d) in which final relief has been granted if 3 months have passed since final relief was granted and no appeal, application for a new hearing or application for judicial review in relation to the proceeding has been filed.

## 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.



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- (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 bargaining instrument.
- (2) The registrar must, if the commission directs, publish an amendment of a bargaining instrument on the QIRC website.

*Note—*

For other documents the registrar must publish on the QIRC website, see sections 160, 161, 215, 230 and 459 of the Act.

- (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 or more proceedings to be joined if it considers—

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- (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 proceedings; 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.

## **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 122 of the Act;
- (b) a claim under chapter 9, 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 379 of the Act;
- (f) a claim for unpaid superannuation under section 396 of the Act;
- (g) a claim for repayment of a fee under section 402 of the Act;
- (h) a claim for the recovery of a debt under the *Workers' Compensation and Rehabilitation Act 2003*, section 580 or 581;
- (i) a fair work claim.

#### **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.

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- (3) Two or more claims may be joined in 1 proceeding.
- (4) An application for a claim may be filed in a registry of a Magistrates Court.
- (5) A proceeding for a claim is started—
  - (a) when the application for the claim is filed under subrule (4); and
  - (b) in an Industrial Magistrates Court constituted by a magistrate in the Magistrates Court in whose registry the application for the claim is filed under subrule (4).

#### **102A Amending an application before hearing**

- (1) An application for a claim may be amended, before the hearing of the application, by the applicant in the same way as starting a claim.
- (2) The applicant must serve the amended application on the respondent as soon as practicable after the amended application is filed, but at least 7 clear days before the hearing.
- (3) If the application is amended before the original application is served on the respondent, the applicant must serve a copy of the original application and the amended application on the respondent.

#### **102B Amending an application during hearing**

- (1) After the hearing of an application for a claim has started before a magistrate, the applicant may apply to the magistrate for leave to amend the application.
- (2) If the proposed amendments substantially alter the scope or 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 magistrate considers appropriate.

### **102C Objecting to proposed amendment of 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.

### **102D Decision about proposed amendment of application**

- (1) If a party objects to all or part of an amended application, the magistrate may, after hearing the objecting party, allow or disallow the proposed amendment.
- (2) The magistrate may make the decision on the terms the magistrate considers appropriate.

### **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 379, 396 or 402 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.
- (5) In this section—

***application***, for a claim, includes an amended application.

## 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 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 1999*, 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).

## **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.

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- (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**

- (1) This rule applies to the extent a magistrate may order costs in a proceeding under the Act or the *Fair Work Act 2009* (Cwlth).

*Note—*

See, for example, rule 123ZC and the *Fair Work Act 2009* (Cwlth), section 570 in relation to restrictions on a magistrate ordering costs in particular proceedings.

- (2) 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 2 as if the proceeding were in a Magistrates Court.

## **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—



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- (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—
  - (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 directly 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

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- (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
- (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 directly 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 must pay the expenses and allowance to the person a reasonable period before the day the person is required to attend.
- (3) A magistrate may treat the failure of a party to pay the person’s expenses or allowance under subrule (2) as a lawful excuse for section 922 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.

## **122 Serving attendance notice**

An attendance notice must be served on the person to whom it is directed under rule 28.

## **Division 6 Miscellaneous**

### **123 Adjournment**

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.

### **123AA Joining proceedings**

- (1) A magistrate may, on the initiative of the magistrate or on the application of a party to a proceeding, order 2 or more proceedings to be joined if the magistrate 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 proceeding; or
  - (c) it is otherwise appropriate or desirable.
- (2) If a party applies for an order under subrule (1), the party must—
- (a) serve a copy of the application on all other parties to the proceedings proposed to be joined; and
  - (b) file an affidavit of service of the copy of the application.
- (3) A magistrate may join proceedings regardless of whether all of the parties to the proceedings consent to the joining.
- (4) This rule does not limit rule 102(3).

### **123AB Form of affidavit of service**

- (1) An affidavit of service of a copy of an application under rule 123AA(1) must be in the approved form and—
- (a) for an affidavit of personal service—must be made by the person who served the copy and state the following—
    - (i) the person’s full name;
    - (ii) the time, day and date the copy 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 of a copy of an application must—
- (a) have a copy of the application attached to it as an exhibit; or
  - (b) be written on a copy of the application; or
  - (c) if the application has been filed—mention the application in a way that enables the application to be identified.

### **123AC Form of amended application**

- (1) An amended application must replace the whole application.
- (2) An amended application must be in the approved form.
- (3) 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.

## **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
- 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—
    - (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.

**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;
    - (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.

### **123FA Form of affidavit of service**

- (1) An affidavit of service of an attendance notice under rule 123F(3)(c) must be in the approved form and—
  - (a) for an affidavit of personal service—must be made by the person who served the attendance notice and state the following—
    - (i) the person’s full name;
    - (ii) the time, day and date the attendance notice 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 of an attendance notice must—
  - (a) have a copy of the attendance notice attached to it as an exhibit; or
  - (b) be written on a copy of the attendance notice; or
  - (c) if the attendance notice has been filed—mention the attendance notice in a way that enables the attendance notice to be identified.

## **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.
- (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.

### **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—

[r 123L]

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- (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 3B                              Proceedings for fair work claims and unpaid amount claims**

### **Division 1                      Preliminary**

#### **123M    Application of part**

This part applies in relation to the following claims (each a *relevant claim*)—



- (a) a fair work claim in an Industrial Magistrates Court;
- (b) an unpaid amount claim in the commission or an Industrial Magistrates Court.

### **123N Definition for part**

In this part—

*relevant claim* see rule 123M.

## **Division 2 Starting relevant claims**

### **123O Application for relevant claim need not be witnessed**

Rule 102(2) does not apply to an application for a relevant claim.

### **123P Filing application for relevant claim**

- (1) Despite rule 102(4), an application for a fair work claim may be filed—
  - (a) by delivering it to the registry; or
  - (b) by posting it to the registry with a written request that it be filed; or
  - (c) by transmitting it to the registry electronically; or
  - (d) in a registry of a Magistrates Court.
- (2) If an application for a relevant claim is filed in a registry of a Magistrates Court, the registrar of the Magistrates Court must forward the application to the registry as soon as practicable.
- (3) Despite rule 102(5), a proceeding for a relevant claim in an Industrial Magistrates Court is started—
  - (a) when the application for the claim is filed under subrule (1); and
  - (b) in—

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- (i) if the application is filed under subrule (1)(a), (b) or (c)—the Brisbane Industrial Magistrates Court; or
- (ii) if the application is filed under subrule (1)(d)—an Industrial Magistrates Court constituted by a magistrate in the Magistrates Court in whose registry the application is filed.

### **123Q Change of venue for relevant claim started in Brisbane Industrial Magistrates Court**

- (1) This rule applies—
  - (a) in relation to a proceeding for a relevant claim started in the Brisbane Industrial Magistrates Court; and
  - (b) if at any time the Brisbane Industrial Magistrates Court is satisfied the proceeding can be more conveniently or fairly heard or dealt with by an Industrial Magistrates Court in a place other than in the central division of the Brisbane Magistrates Courts District.
- (2) The Brisbane Industrial Magistrates Court may, on its own initiative or on the application of a party to the proceeding, order that the proceeding be transferred to the other place.
- (3) If the proceeding is transferred under subrule (2)—
  - (a) the proceeding is pending in an Industrial Magistrates Court in the other place; and
  - (b) unless the Brisbane Industrial Magistrates Court otherwise orders, the hearing of the proceeding is to be heard and decided by an Industrial Magistrates Court in the other place.

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## Division 3                      Simplified procedures

### 123R    Parties may elect to apply simplified procedures

- (1) This rule applies to a proceeding for an unpaid amount claim in the commission or Industrial Magistrates Court, other than a claim for a relevant amount under section 531 of the Act.
- (2) The parties to the proceeding may agree to all or part of the simplified procedures applying to the proceeding.
- (3) The agreement must be—
  - (a) in writing; and
  - (b) filed in the registry.
- (4) The *simplified procedures* are that the commission or an Industrial Magistrates Court—
  - (a) is not bound by laws of evidence or procedure applying to a proceeding in the commission or Industrial Magistrates Court; and
  - (b) may inform itself of the facts in any way it considers appropriate; and
  - (c) must observe the rules of natural justice; and
  - (d) must record the reasons for its decision.
- (5) The simplified procedures apply to the proceeding to the extent agreed.
- (6) The commission or Industrial Magistrates Court must hear and decide the proceeding under the simplified procedures applying under subrule (5), unless the commission or Industrial Magistrates Court considers deciding the proceeding under the procedures would be an abuse of process.

## **Division 4                      Conciliation of relevant claims**

### **123S    Conciliation certificate**

- (1) For sections 507F(1) and 547F(1) of the Act, a certificate about the conciliation process (a *conciliation certificate*) must be in the approved form.
- (2) The conciliation certificate—
  - (a) must not contain comment about the extent to which a party participated or refused to participate in the conciliation; and
  - (b) may state that a party did not attend the conciliation.
- (3) The conciliator must give a copy of the conciliation certificate to the parties.

### **123T    Record of conciliation agreement**

- (1) Unless the parties otherwise agree, the conciliator for a relevant claim must ensure that an agreement reached in the conciliation process is—
  - (a) placed in a sealed container, for example, an envelope; and
  - (b) marked with the file number; and
  - (c) marked—
    - (i) for a relevant claim in an Industrial Magistrates Court—‘Not to be opened without an order of an Industrial Magistrates Court’; or
    - (ii) for an unpaid amount claim in the commission—‘Not to be opened without an order of the commission’; and
  - (d) given to the registrar.
- (2) The container may be opened only if—

- (a) for a relevant claim in an Industrial Magistrates Court—the Industrial Magistrates Court orders it to be opened; or
- (b) for an unpaid amount claim in the commission—the commission orders it to be opened.

### **123U Hearing of relevant claims not referred to or resolved at conciliation**

- (1) This rule applies in relation to a relevant claim in an Industrial Magistrates Court if—
  - (a) the registrar decides not to refer the relevant claim to conciliation; or
  - (b) the conciliation process is finished other than because the parties agree on a resolution of all of the relevant claim.
- (2) The registrar must—
  - (a) notify the Industrial Magistrates Court of the matter mentioned in subrule (1)(a) or (b) for the relevant claim; and
  - (b) refer the relevant claim or, if subrule (1)(b) applies, the unresolved part of the relevant claim for hearing by the Industrial Magistrates Court.

## **Division 5 Settlement conferences**

### **123V Definition for division**

In this division—

*settlement conference* see rule 123W(1).

### **123W Commission or Industrial Magistrates Court may require settlement conference**

- (1) At any time after a proceeding for a relevant claim is started, the commission or an Industrial Magistrates Court may direct that a conference (*settlement conference*) be held.
- (2) However, if the relevant claim has been referred to conciliation under section 507C or 547C of the Act, the commission or Industrial Magistrates Court may act under subrule (1) only if—
  - (a) the conciliation is not proceeding under section 507C(5) or 547C(5) of the Act; or
  - (b) the conciliation has finished.
- (3) A settlement conference may consider the following matters—
  - (a) the possibility of settling the proceeding at the settlement conference without a hearing;
  - (b) the simplification of the issues;
  - (c) the possibility of obtaining admissions that may facilitate the hearing or reduce costs;
  - (d) the necessity or desirability of further or better particulars of the relevant claim;
  - (e) the amount of any damages;
  - (f) the possible length of any hearing;
  - (g) the burden of costs a party may have to bear;
  - (h) anything else that may help dispose of the proceeding.
- (4) The commission or Industrial Magistrates Court may direct that—
  - (a) the settlement conference be held at the date, time and place stated in the direction; and
  - (b) all parties attend personally or, for a corporation, by a person with authority to compromise the claim for the corporation.

- (5) Also, an Industrial Magistrates Court may direct that the settlement conference be held by a registrar of a Magistrates Court.
- (6) If the commission or Industrial Magistrates Court acts on its own initiative, the commission or Industrial Magistrates Court must give the parties at least 2 business days notice of—
  - (a) the date, time and place of the settlement conference; and
  - (b) if the Industrial Magistrates Court makes a direction under subrule (5)—the fact that the registrar of the Magistrates Court will hold the settlement conference.
- (7) The commission or Industrial Magistrates Court may adjourn a proceeding listed for hearing so a settlement conference may be held.

### **123X Holding settlement conference**

- (1) A settlement conference must be held in private.
- (2) At a settlement conference, each party must—
  - (a) be sufficiently aware of the party's case so as to be able to answer any question that may be asked about the claim or any defence to the claim; and
  - (b) be in a position to make and respond properly to an offer of settlement.
- (3) If the commission or an Industrial Magistrates Court holds a settlement conference, the commission or Industrial Magistrates Court may—
  - (a) direct that a further settlement conference be held; or
  - (b) make the suggestions to a party the commission or Industrial Magistrates Court considers appropriate to help in promptly disposing of the proceeding; or
  - (c) give a party the directions, or make the orders, the commission or Industrial Magistrates Court considers appropriate.

- (4) If a registrar of a Magistrates Court holds a settlement conference, the registrar of the Magistrates Court may—
  - (a) make the suggestions to a party the registrar of the Magistrates Court considers appropriate to help in promptly disposing of the proceeding; or
  - (b) make a recommendation to the Industrial Magistrates Court about the conduct of the proceeding, including, for example, the holding of any further settlement conference.
- (5) A recommendation made under subrule (4)(b) must be in writing and attached to the file in the way the Industrial Magistrates Court directs.
- (6) At a settlement conference, any 2 or more parties may sign a memorandum of the results of the conference including any admissions made by the parties.
- (7) A memorandum signed under subrule (6) must be attached to the file in the way the commission or Industrial Magistrates Court directs.
- (8) The commission or Industrial Magistrates Court may make any orders necessary to give effect to a memorandum signed under subrule (6).
- (9) The commission or Industrial Magistrates Court must record on the file any formal orders made by the commission or Industrial Magistrates Court at a settlement conference or under subrule (8), but must not keep a record of anything discussed at the conference.

### **123Y Failure to attend settlement conference**

- (1) This rule applies if a party directed to attend a settlement conference fails to attend the conference.
- (2) If the commission or Industrial Magistrates Court is satisfied by affidavit that the party who failed to attend was given notice of the date, time and place of the settlement conference, the commission or Industrial Magistrates Court may—



- (a) if the party is the applicant—stay or dismiss the proceeding; or
  - (b) if the party is a respondent and the relevant claim discloses a sufficient cause of action—decide the proceeding by making an order or other decision the commission or Industrial Magistrates Court considers appropriate in the circumstances.
- (3) Also, the commission or Industrial Magistrates Court may give the directions for listing the proceeding for hearing or for holding another settlement conference the commission or Industrial Magistrates Court considers appropriate in the circumstances.
- (4) If the commission or Industrial Magistrates Court makes a decision under subrule (2), the commission or Industrial Magistrates Court may, on application made within the time the commission or Industrial Magistrates Court considers reasonable, set aside the decision and order a hearing or further hearing.

## **Division 6                    Hearing of relevant claims**

### **123Z    Procedure for hearing of relevant claim**

- (1) The parties to a proceeding for a relevant claim must have all documents directly relevant to the proceeding available at the hearing of the proceeding.
- (2) The commission or an Industrial Magistrates Court—
  - (a) may hear the proceeding in private; and
  - (b) must make a record of the evidence given.
- (3) If the commission or an Industrial Magistrates Court hears and decides the proceeding, the commission or Industrial Magistrates Court must give a copy of the order endorsing the decision to the parties.

*Note—*

See part 2, division 2, subdivision 4 and part 3, division 4 in relation to the powers of the commission and an Industrial Magistrates Court to make directions orders about the conduct of a proceeding.

### **123ZA Copy of order endorsing decision to be given to registry**

If an Industrial Magistrates Court hears and decides a proceeding for a relevant claim, the Industrial Magistrates Court must give a copy of the order endorsing the decision to the registry as soon as practicable after the order is endorsed.

## **Division 7                      Miscellaneous**

### **123ZB No alternative dispute resolution process for relevant claims**

Despite rule 106, the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4 does not apply to a relevant claim.

### **123ZC Costs for particular relevant claims**

- (1) This rule applies to a proceeding for a relevant claim other than a proceeding to which section 545 of the Act or section 570 of the *Fair Work Act 2009* (Cwlth) applies.
- (2) A person must bear the person's own costs in relation to the proceeding.
- (3) However, the commission or an Industrial Magistrates Court may, on application by a party to the proceeding, order a party to the proceeding to pay costs incurred by another party if the commission or Industrial Magistrates Court is satisfied—
  - (a) the party made the application or responded to the application vexatiously or without reasonable cause; or
  - (b) it would have been reasonably apparent to the party that the application or response to the application had no reasonable prospect of success.



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- (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 person'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 530 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 person'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.

## **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—

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- (a) to the court under section 556 of the Act from a decision of a magistrate; or
  - (b) to the court under section 557 of the Act from a decision of the commission; or
  - (c) to the full bench under section 560 of the Act from a decision of the registrar; or
  - (d) to the commission under section 562 of the Act against the stand-down of an employee under section 333 of the Act; or
  - (e) under an appeal Act; or
  - (f) under the *Child Employment Act 2006*, section 27; or
  - (g) under the *Further Education and Training Act 2014*, section 168.
- (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 *Further Education and Training Act 2014*;
    - (v) a completion certificate under the *Further Education and Training Act 2014*;

- (vi) a qualification or statement of attainment as defined under the *Further Education and Training Act 2014*, schedule 2;
- (vii) a declaration, variation of a declaration, or refusal to vary a declaration, of a prohibited employer under the *Further Education and Training Act 2014*;
- (viii) a decision, determination, direction or notice made or given under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*;
- (ix) a directive given by the chief inspector under the *Coal Mining Safety and Health Act 1999*, part 9, division 5;
- (x) 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—
  - (i) given under rule 147(2) or 231(2) relating to the proceeding in which the decision was made; or
  - (ii) given under section 265(7) of the Act relating to the decision; or
  - (iii) 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 *Further Education and Training Act 2014*;
  - (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, or a site senior executive notice, under the *Coal Mining Safety and Health Act 1999* relevant to the appeal;
- (i) a certificate of competency, or a site senior executive notice, under the *Mining and Quarrying Safety and Health Act 1999* relevant to the appeal;
- (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
    - (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.

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- (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) If the chief executive (training) is a respondent to an appeal, subrule (2) is taken to be complied with if the appellant serves the application on the chief executive (training).

### **136 Service of application if respondent is the chief executive (training)**

- (1) This rule applies if—
  - (a) the chief executive (training) is a respondent to an appeal under the *Further Education and Training Act 2014*, section 168; and
  - (b) the chief executive (training) is served with the application to appeal under rule 135.
- (2) The chief executive (training) must promptly—
  - (a) serve a copy of a document mentioned in rule 133(2)(b)(ii) to (vii), (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.

## **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—Act, s 557 or 562**

- (1) This rule applies to an application to appeal—

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- (a) to the court under section 557 of the Act from a decision of the commission; or
  - (b) to the commission under section 562 of the Act against the stand-down of an employee under section 333 of the Act.
- (2) The application to appeal must be filed and state the following—
- (a) the name and last known address of each respondent or other party;
  - (b) whether the appeal is from all or part (and which part) of the decision appealed from;
  - (c) concise grounds of the appeal;
  - (d) the decision the appellant wants instead of the decision appealed from;
  - (e) if the appeal is from a decision of the full bench—whether the president was a member of the full bench.

*Notes—*

- 1 An application to appeal must be in the approved form. See rules 4 and 8(1) and (4).
- 2 See section 557(5) of the Act for the definition of *commission* for that section.

#### **140 Application for leave to appeal—Act, s 557 or 560**

- (1) An application for leave to appeal 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 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 557(2) or 560(2) 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 557 or 560**

If the court or full bench refuses to grant leave to appeal—

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

**142 Response to application for leave to appeal—Act, s 557 or 560**

- (1) A respondent opposing an application for leave to appeal 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 court or full bench may allow.

**143 Application to appeal to full bench from registrar—Act, s 560**

An application to appeal from a decision of the registrar under section 560(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.

**144 Application to appeal from magistrate—Act, s 556**

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

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- (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 558**

A warrant under section 558(2) 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.
- (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;

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- (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 Modern employment conditions**

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

An application under section 110(3) of the Act must—

- (a) be in the approved form; and



(b) state the grounds on which the application is made.

**149A Application for order fixing minimum wages and employment conditions for apprentices and trainees**

An application under section 136(4)(b) of the Act for an order fixing minimum wages and employment conditions for apprentices or trainees must be in the approved form.

**149B Application for order about tools**

An application under section 137(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 approved form.

**149C 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 approved form.

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

- (1) This rule applies to an application under section 476 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 95(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 5, part 3 of the Act must be in the 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 317(1) of the Act must—
  - (a) be filed; and
  - (b) be in the approved form.
- (2) The applicant must serve a copy of the application on the employer within 7 days after filing the application.

**154 Application for compensation order**

An application for an order for compensation under section 122(1)(b) of the Act must be in the approved form.

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

- (1) An application for an order under section 326 of the Act must be in the 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.

**156 Application for order for contravention of Act, s 329**

- (1) An application for an order under section 329(3) of the Act must be in the approved form.
- (2) An affidavit contained in or accompanying the application must state—
  - (a) the facts it is alleged constitute the contravention of section 329(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 330**

- (1) An application for an order under section 330(3) of the Act must be in the approved form.
- (2) An affidavit contained in or accompanying the application must state—
  - (a) the facts it is alleged constitute the contravention of section 330(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 9 Modern awards**

**160 Application to make or vary modern awards**

An application to make, or for an order varying, a modern award under section 147(2)(b) of the Act must be in the approved form.

**161 Application to make modern awards that relate to remuneration of employees**

- (1) This rule applies to an application under section 147(2)(b) of the Act to make a modern 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 provides for equal remuneration for work of equal or comparable value.

*Note—*

See section 143(1)(c) and chapter 5, part 2, division 1 of the Act.

**162 Application to revoke modern awards**

An application for an order revoking a modern award under section 150(3)(b) of the Act must be in the approved form.

## **Part 10 Bargaining instruments**

**167 Notice in relation to project agreement or multi-employer agreement**

- (1) Written notice given to the commission under section 169(2)(b) of the Act must be filed in the approved form.
- (2) Written notice given to the commission under section 170(2)(b) of the Act must be filed in the approved form.

**168 Request to help parties reach agreement**

For section 175(1)(b) of the Act, a request for the commission to help the negotiating parties reach agreement must be made in the approved form.

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**169 Consent application for arbitration**

An application for arbitration of a matter under section 178(1) of the Act must—

- (a) be in the approved form; and
- (b) contain a form of consent to arbitration signed by all of the negotiating parties.

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

(1) An application under section 242(1) or (2) of the Act in relation to a proposed bargaining instrument must—

- (a) be made before—
  - (i) for a proposed agreement—the agreement is made; or
  - (ii) for a proposed bargaining award—an application is made under section 190 of the Act for the making of the bargaining award; and
- (b) be in the approved form.

(2) An affidavit contained in or accompanying an application made under section 242(1) of the Act by an employee organisation in relation to a proposed bargaining instrument must—

- (a) state the following—
  - (i) the name, address and membership number of each employee who has requested the organisation, under section 171 of the Act, to represent the employee in negotiating with the employer about the proposed instrument;
  - (ii) the date of the request;
  - (iii) the calling of each employee;
  - (iv) the name of the proposed bargaining instrument; and

- (b) if the request to represent the employee is written—have attached a copy of the request.
- (3) An applicant under section 242(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 242(2) of the Act by an employer in relation to a proposed bargaining instrument 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 instrument;
  - (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 instrument; and
    - (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 instrument.

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

An application under section 189 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 agreement; and
- (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.

### **172A Application for making of bargaining award**

An application under section 190 of the Act to make a bargaining award and terminate the relevant modern award must—

- (a) be in the approved form; and
- (b) be signed by or for the applicant; and
- (c) be accompanied by the original proposed bargaining award.

### **173 Form of proposed bargaining instrument**

A proposed bargaining instrument filed with an application under section 189 or 190 of the Act 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 proposed instrument in electronic form in a format that allows the text of the instrument to be searched and copied.

#### **174 Application for decision about designated award**

An application under section 213(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 nominal expiry date of bargaining instrument**

- (1) An application under section 223 of the Act to extend the nominal expiry date of a bargaining instrument must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—
  - (a) the steps taken to ensure the commission is satisfied as required under section 223(4) of the Act; and
  - (b) the steps taken to ensure section 244 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 application and affidavit.



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**176 Application to amend bargaining instrument**

- (1) An application under section 225 of the Act to amend a bargaining instrument 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 bargaining instrument; and
  - (c) the steps taken to ensure—
    - (i) the commission is satisfied as required under section 225(2)(a) of the Act; and
    - (ii) section 244 of the Act has not been contravened; and
  - (d) details of the procedures for preventing and settling disputes in the bargaining instrument; 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 application, amendment and affidavit.

**177 Application to terminate certified agreement or arbitration determination on or before nominal expiry date—Act, s 227**

An application under section 227(1) of the Act to terminate a certified agreement or arbitration determination on or before its nominal expiry date 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 termination.

**178 Application to terminate certified agreement or arbitration determination after nominal expiry date—Act, s 228**

An application under section 228(1) of the Act to terminate a certified agreement or arbitration determination after its nominal expiry date must—

- (a) be in the approved form; and
- (b) be accompanied by an affidavit stating that the applicant has given notice of the applicant’s intention to terminate the agreement or determination to all other persons to whom the agreement or determination applies.

**179 Application for approval to engage in industrial action—Act, s 235**

An application for approval to engage in proposed industrial action under section 235(1) of the Act must—

- (a) be in the approved form; and
- (b) be accompanied by an affidavit stating the steps taken by the applicant to ensure the registrar is satisfied as required under section 235(1)(a) to (d) of the Act.

## **Part 11 Industrial disputes**

**180 Notice of industrial dispute**

- (1) A notice under section 261(2) of the Act must be in the approved form and state the following—
  - (a) the issues involved;
  - (b) the name, telephone number and email address or 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 263 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.

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- (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 6, part 3 of the Act.

## **182 Notice to show cause**

A show cause notice under section 265(7) of the Act must be in the approved form.

## **185 Application for order for contravention of Act, s 268**

- (1) An application for an order under section 269 of the Act must be in the approved form.
- (2) An affidavit contained in or accompanying the application must state the facts it is alleged constitute a contravention of section 268 of the Act.

## **185A Striking out industrial dispute**

- (1) This rule applies if—
  - (a) the registrar has been notified of an industrial dispute under section 261 of the Act; and

- (b) no action has been taken by the applicant in relation to the industrial dispute for at least 6 months since the last action was taken by the applicant in the industrial dispute.
- (2) The registrar may strike out the industrial dispute.

## **Part 12                      Records and wages**

### **186      Application for issue of an authority**

- (1) An application for an authority under section 337 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 or suspend authorised officer's authority**

An application for an authorised officer's authority to be revoked or suspended under section 338(1) of the Act must be in the approved form and state—

- (a) the condition of the officer's authorisation that was allegedly breached; or
- (b) the facts of how the officer allegedly entered an employer's workplace other than under section 348 of the Act; or
- (c) the facts it is alleged constitute a contravention of section 348(2) of the Act; or
- (d) the facts of how the officer allegedly exercised the officer's power to enter in an unreasonable or vexatious way; or
- (e) 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 officer.

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

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

An application under section 403(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 400(1) or (2) of the Act.

## **Part 14**                      **Industrial organisations**

### **Division 1**                      **Registration**

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

Each of the following must be in the approved form—

- (a) an application by an association for registration as an employee organisation or employer organisation under section 602(1) of the Act;
- (b) an application by a corporation for registration as an employer organisation under section 602(2) of the Act.

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

An application to change the list of callings of an organisation under section 615 of the Act must—

- (a) be in the 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 16 and 17.

### **191 Notice of objection**

A notice of objection under section 606(1)(b) of the Act or section 24(5) of the regulation must be in the approved form.

*Note—*

See also division 4 and the regulation, section 25.

### **192 Answering objections**

A written response under section 26 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 635(1) of the Act by an organisation for approval for ballots to decide elections for its elected officers not to be postal ballots must be in the 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 16.

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

An application under section 638(a) of the Act by an organisation to cancel an approval for ballots to decide elections for its elected officers not to be postal ballots must be in the approved form.



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

### **195      Application about organisation's rules under Act, s 646**

An application under section 646(1) of the Act must be in the 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 660**

An application for an order under section 660 of the Act must be in the approved form.

### **197      Application for approval to amend name under Act, s 661**

An application for an order under section 661 of the Act approving an amendment of an organisation's name must—

- (a) be in the 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 16 and 17.

## **198 Application to approve eligibility rule amendment**

- (1) An application for an order under section 662 of the Act approving an amendment to an eligibility rule must—
  - (a) be in the 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 16 and 17.

- (2) The application must have attached a schedule divided into 3 columns containing—
  - (a) in column 1—the present 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.

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**199 Application for approval of other amendment to rules—Act, s 666**

An application for the registrar’s approval under section 666 of the Act of a proposed amendment to an organisation’s rules must—

- (a) be in the 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 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
- (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 669 of the Act must be in the approved form.

*Note—*

See also the regulation, section 33.

## **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 669(1) of the Act; and
- (d) if the election has ended—state the date the election ended.

## **Division 7                      Registers**

### **202      Officers register**

The copy of an organisation's officers register required to be filed under section 735 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 section 595 of the Act.

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## **Division 8 Exemptions**

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

An application under section 802 of the Act for an exemption from holding an election for a stated office or offices must—

- (a) be in the 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 19.

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

An application under section 804 of the Act for an exemption from keeping a members register or officers register must be in the approved form.

### **205 Application for exemption from accounting or audit obligations—Act, s 808**

An application for an exemption under section 808(1) of the Act from the whole or part of chapter 12, part 11, division 6, subdivisions 3 and 4 of the Act must—

- (a) be in the 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 with the Australian commission.

**206 Application for exemption from accounting or audit obligations for an employer organisation that is a corporation—Act, s 820**

- (1) An application under section 820 of the Act for an exemption from the whole or part of chapter 12, part 11, division 6, subdivisions 3 and 4 of the Act must—
  - (a) be in the 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 812 of the Act for an exemption from the requirement that the electoral commission conduct particular elections must be in the approved form.

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## **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 61 of the regulation for an amalgamation ballot must be in the approved form.

*Note—*

See also section 841 of the Act.

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

An application under section 62 of the regulation for a withdrawal ballot must be in the approved form.

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

An application under section 63 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 approved form.

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

An application under section 64 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 approved form.

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

An application under section 65 of the regulation for an exemption from holding a withdrawal ballot must be in the approved form.

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

- (1) An application under section 66(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 66(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 67 of the regulation must be in the approved form.

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

A notice of objection under section 73, 74 or 75 of the regulation must be in the approved form.

*Note—*

See also the regulation, section 76.

**216 Answering objections**

A statement under section 77 of the regulation in answer to a notice of objection served under section 76(5) of the regulation must be in the approved form.



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## **Subdivision 2      Form of ballot papers—regulation, s 96**

### **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 879(1) or (4) of the Act for a deregistration order must be in the approved form.

## **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 28 days of the requirement.

## **Part 16                              General**

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

- (1) An application for a permit under section 978 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 979(1) of the Act;
  - (b) notice of the application and of the hearing of any objection to the issue of the permit under section 979(4) of the Act;
  - (c) the permit.
- (2) An application to cancel a permit under section 979(7) of the Act must be in the approved form.

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## Part 17 Fees

### 224 Fees relating to proceedings in court or commission or before registrar

The fees payable under the Act are stated in schedule 1.

### 225 Fees in Industrial Magistrates Court

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

## **228 Searching and copying documents**

- (1) A person may not search or inspect documents in a proceeding without the registrar's prior approval.
- (2) If the person is not a party or representative of a party, the person must pay the prescribed fee for the search or inspection.
- (3) If the registrar approves, a person may obtain a certified copy of a filed document.
- (4) The certified copy must have the seal and the word 'copy' stamped on it.
- (5) The person must pay the prescribed fee for the certified copy.
- (6) 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 by the applicant for 6 months since the last action was taken by the applicant 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 by the applicant in relation to the application for at least 1 year since the last action was taken by the applicant 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;
  - (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 by the applicant in relation to the application for at least 1 year since the last action was taken by the applicant 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.

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

### **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.



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**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.

**Division 3 Transitional provision for the  
Industrial Relations Legislation  
Amendment Regulation (No. 1) 2014**

**239 Transitional provision**

- (1) This rule applies to an appeal mentioned in the *Further Education and Training Act 2014*, section 213(2) or 214(2).
- (2) The following rules, as in force immediately before the commencement of this rule, continue to apply in relation to the appeal as if the *Industrial Relations Legislation Amendment Regulation (No. 1) 2014* had not been made—
  - (a) rule 132(1)(g);
  - (b) rule 133(2)(b)(iv) to (vii) and (e)(iii);
  - (c) schedule 2, definition *enabling Act*, paragraph (f);
  - (d) schedule 2, definition *stay of a decision under appeal or review*, paragraph (f).
- (3) Rule 136 applies in relation to the appeal as if the reference in rule 136(1)(a) to the *Further Education and Training Act 2014*, section 168 were a reference to the *Vocational Education, Training and Employment Act 2000*, section 230.

## **Division 4                      Transitional provisions for Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017**

### **240      Continuation of r 159 for Act, s 1020**

Rule 159, as in force before the commencement, continues to apply in relation to conduct to which section 1020 of the Act applies.

### **241      Existing proceedings and proceedings not started**

- (1) This section applies to a proceeding to which section 1023 or 1024 of the Act applies.
- (2) These rules, as in force immediately before the commencement, continue to apply in relation to the proceeding.

### **242      Continuation of pt 3, div 1 and r 188**

Part 3, division 1 and rule 188, as in force before the commencement, continue to apply in relation to a fee received by a private employment agent before the commencement.

## **Division 5                      Transitional provisions for Industrial Relations (Tribunals) Amendment Rule 2021**

### **243      Existing practice notes**

- (1) This rule applies to a practice note—
  - (a) issued, or taken to have been issued, under former rule 92; and
  - (b) in force immediately before the commencement.

(2) The practice note is taken to be a practice direction under new rule 92.

(3) In this rule—

*former rule 92* means rule 92 as in force from time to time before the commencement.

*new rule 92* means rule 92 as in force from the commencement.

#### **244 Application of r 94A**

Rule 94A applies to an exhibit held by the court, commission or registrar in a finalised proceeding whether the proceeding becomes a finalised proceeding before or after the commencement.

#### **245 Application of r 185A to industrial disputes started before commencement**

Rule 185A applies to an industrial dispute started before the commencement only if no action has been taken by the applicant in relation to the industrial dispute for at least 6 months after the commencement.

### **Division 6 Transitional provision for Industrial Relations and Other Legislation Amendment Regulation 2022**

#### **246 Application of r 101 to fair work claims**

(1) New rule 101 applies, and is taken always to have applied, to a fair work claim in an Industrial Magistrates Court started on or after 1 March 2021.

(2) In this section—

*new rule 101* means rule 101 as in force from the commencement.

## Schedule 1 Fees relating to proceedings in court or commission or before registrar

rule 224

### Fee units

1	Filing—	
	(a) an application under section 471 of the Act, by a party or inspector, to amend or declare void (wholly or partly) a contract	51.50
	(b) an application under section 552(2) of the Act for directions, as mentioned in that section, relating to an application mentioned in paragraph (a)	18.10
2	Searching for a filed document	5.00
3	Inspecting a filed document	5.00
4	Copying a record of the court or commission, or a document filed in the registry, including reasons for judgment—for each page	0.50
5	Certifying a copy of a record or document mentioned in item 4	70.50
	<i>Note—</i>	
	This fee is in addition to the fee mentioned in item 4.	
6	Retrieving an archived file—for each file	28.80

## 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 *Electricity Act 1994*; or

*Note—*

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

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

***approved form*** means a form approved under section 989 of the Act.

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

***Brisbane Industrial Magistrates Court*** means an Industrial Magistrates Court constituted by a magistrate in the central division of the Brisbane Magistrates Courts District.

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

**complaint referral** means a referral of a complaint under the *Anti-Discrimination Act 1991*, section 155(4), 164A(3)(a), 166(1) or 167(4)(b) or (5).

**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 *Anti-Discrimination Act 1991*; or
- (c) the *Child Employment Act 2006*; or
- (d) the *Further Education and Training Act 2014*; or
- (e) the *Pastoral Workers' Accommodation Act 1980*; or
- (f) the *Private Employment Agents Act 2005*; or
- (g) the *Trading (Allowable Hours) Act 1990*; or
- (h) the *Workers' Accommodation Act 1952*; or
- (i) 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.

**hearing**, for part 2, division 2, subdivision 7A, see rule 64A.

**human rights commissioner** means the human rights commissioner under the *Anti-Discrimination Act 1991*.

**industrial tribunal**, for part 2, division 2, subdivision 7A, see rule 64A.

**leave to appeal** means—

- (a) the court's leave to appeal under section 557(2) or (4) of the Act; or
- (b) the full bench's leave to appeal under section 560(2) of the Act.

**non-party**, for part 2, division 2, subdivision 7A, see rule 64B(1).

**notice**, for part 2, division 2, subdivision 7A, see rule 64A.

**originating application**, for part 2, division 2, subdivision 7A, see rule 64A.

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

**regulation** means the *Industrial Relations Regulation 2018*.

**relevant claim**, for part 3B, see rule 123M.

**settlement conference**, for part 3B, division 5, see rule 123W(1).

**stamp** includes electronically stamp.

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

- (a) an order that a decision be stayed under section 566 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 *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;
- (d) a stay of a decision under the *Petroleum and Gas (Production and Safety) Act 2004*, section 826;
- (e) an order that a decision be stayed under the *Further Education and Training Act 2014*, section 169;
- (f) a stay of a decision under the *Work Health and Safety Act 2011*, section 229C.

**WHS entry permit** see the *Work Health and Safety Act 2011*, schedule 5.

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