

Queensland



Subordinate Legislation 2000 No. 329

*Industrial Relations Act 1999*

**INDUSTRIAL RELATIONS (TRIBUNALS)  
RULES 2000**

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## **PART 1—PRELIMINARY**

### **Short title**

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

### **Commencement**

2. These rules commence on 1 January 2001.

### **Definitions**

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

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

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

### **Purpose of rules**

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

## **PART 2—INDUSTRIAL TRIBUNALS AND REGISTRY**

### *Division 1—Application of part*

#### **Application of part 2**

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

***Division 2—Procedures of industrial tribunals******Subdivision 1—Starting proceedings*****Starting proceedings**

**7.(1)** A proceeding before the court, commission or registrar must be started by an application in the approved form.

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

- (a) if the court, commission or registrar or these rules requires otherwise; or
- (b) to a proceeding started on the initiative of the commission<sup>1</sup> or registrar; or
- (c) to a proceeding started as directed by the Minister under the Act; or
- (d) to a proceeding arising out of the giving of a notice of industrial dispute under section 229<sup>2</sup> of the Act.

**(3)** An application to appeal is a document starting a proceeding.

**(4)** A proceeding starts when the document starting the proceeding—

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

**Who has carriage of proceeding**

**8.(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.

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<sup>1</sup> For proceedings started on the initiative of the commission see rule 82.

<sup>2</sup> Section 229 (Notice of industrial dispute)

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

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

### **Form of applications**

9.(1) An application must—

- (a) be divided into consecutively numbered paragraphs, each detailing, as far as is convenient, a separate matter; and
- (b) name the relevant provisions of any legislation or industrial instrument that relates to the application; and
- (c) state the relief or orders sought; and
- (d) state any directions required to expedite the proceedings.

(2) An application must be supported by an affidavit.

(3) If practicable, the affidavit must be incorporated in the application.

### **Form of affidavit supporting an application**

10. An affidavit supporting an application must—

- (a) identify the applicant; and
- (b) if not made by a party in person—state the capacity and authority under which the person is making the affidavit; and
- (c) state concisely the material facts relied on to support the application; and
- (d) state any other matters required under these rules; and
- (e) comply with subdivision 6.<sup>3</sup>

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<sup>3</sup> Subdivision 6 (Evidence and affidavits)

**Document starting proceeding to state address and phone and fax number**

**11.(1)** Unless otherwise provided by these rules, a document starting a proceeding must not be filed unless the document states—

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

**(2)** If a lawyer or agent acts for the applicant, a document starting a proceeding must not be filed unless the document states—

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

**(3)** An applicant or an applicant's lawyer or agent may include his or her email address in a document starting a proceeding.

**General requirements for documents for filing**

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

- (a) be on A4 (210 mm x 297 mm) paper; and
- (b) be on 1 side of the page only; and
- (c) if typewritten—

- (i) be in Times New Roman font; and
- (ii) be in 12 point font size; and
- (iii) have only fully justified text; and
- (d) if not typewritten—be printed in upper case letters; and
- (e) be clearly legible; and
- (f) be well spaced and divided into convenient paragraphs; and
- (g) have paragraphs numbered on the inner edge of the margin for each new topic; and
- (h) have a 2 cm margin on each side; and
- (i) be numbered consecutively on each page; and
- (j) not contain a logo or other embellishment; and
- (k) state a short description of the nature of the document; and
- (l) if the party or person ordered or permitted to appear or to be represented in the proceeding is represented by an agent, be accompanied by a notice of appointment of agent under rule 102;<sup>4</sup> and
- (m) contain the information, including the applicant's address for service, required under rule 11.

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

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

### **Filing of documents**

**13.(1)** Unless these rules or a direction of the court, commission or registrar otherwise requires, a party seeking to file a document must give the registrar 4 copies of the document.

(2) The registrar may refuse to accept a document for filing or another

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<sup>4</sup> Rule 102 (Notice of appointment of agent)

document if it does not comply with—

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

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

### **Ways of filing**

**14.** A document may be filed—

- (a) by delivering it to the registry; or
- (b) by posting it to the registry with a written request that the document be filed; or
- (c) if expressly allowed by the court, commission or registrar—by transmitting it to the registry by fax, email or another method, subject to the original document being tendered and the fee, if any, being paid; or
- (d) for an appeal from an industrial magistrate—under rule 119.<sup>5</sup>

### **Document becomes a record on filing**

**15.(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.

### **Change of address for service**

**16.** 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.

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<sup>5</sup> Rule 119 (Filing and service of application to appeal)

### ***Subdivision 2—Amendments***

#### **Amending an application before hearing**

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

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

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

#### **Form of amendments**

**18.(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.

#### **Amending an application during hearing**

**19.(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.

#### **Serving amended application**

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

**(2)** If, when the amended application is filed, the original application has not been served on a party to the proceedings or a party named in a

directions order, the party must also be served with the original application.

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

### **Objecting to amended application**

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

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

(2) The response must state—

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

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

### **Determination of amended application**

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

(2) The decision must be made by—

- (a) if the hearing of the application has not started—the registrar; or
- (b) if the hearing of the application has started—the court, commission or registrar hearing the application.

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

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

### *Subdivision 3—Service*

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

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

(2) Subrule (1) does not apply if—

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

#### **Time for service**

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

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

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

#### **Service not allowed on certain days**

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

#### **How personal service is performed**

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

(2) However, if the person does not accept the document, or copy, the

party serving it may serve it by putting it down in the person's presence and telling the person what it is.

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

### **Service of documents**

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

- (a) personal service under rule 26;
- (b) for an organisation or association—leaving the document with or tendering it to the secretary of the organisation or association;
- (c) leaving the document with someone who is apparently an adult living at the relevant address;
- (d) if there is no-one at the relevant address—leaving the document at the relevant address in a position where it is reasonably likely to come to the person's attention;
- (e) if the relevant address is within a building or area to which the person serving the document has been denied access—leaving the document at the building or area in a position where it is reasonably likely to come to the person's attention;
- (f) posting<sup>6</sup> the document to the relevant address;
- (g) if the person has given—
  - (i) a fax number under these rules—faxing the document to the person; or
  - (ii) an email address under these rules—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 or style other than the person's name—leaving the document at the person's place of

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<sup>6</sup> For the meaning of service by post see the *Acts Interpretation Act 1954*, section 39A (Meaning of service by post etc.)

business with a person who appears to have control or management of the business at the place.

(2) However—

- (a) an attendance notice under section 232(2)<sup>7</sup> of the Act may not be served by email; and
- (b) any other attendance notice may not be served by fax or email.

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

(4) In this rule—

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

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

### **Service of directions order on applicant**

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

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

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

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<sup>7</sup> Section 232 (Compulsory conference)

**Service by an officer of the court**

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

**Substituted service**

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

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

*Example—*

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

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

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

**Informal service**

31. If—

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

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

**Service on agent**

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

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

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

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

**Service by agreement**

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

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

**When affidavit of service is required**

**34.(1)** A party serving a document under rule 23<sup>8</sup> must, as soon as practicable after serving the document, file an affidavit of service of the document.

(2) For a document served under rule 29,<sup>9</sup> the registrar must direct if and when an affidavit of service is required.

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<sup>8</sup> Rule 23 (Who is to be served)

<sup>9</sup> Rule 29 (Service by an officer of the court)

**Form of affidavit of service**

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

- (a) for an affidavit of personal service—must be made by the person who served the document and state the following—
  - (i) the person's full name;
  - (ii) the time, day and date the document was served;
  - (iii) the place of service;
  - (iv) the name of the person served and how the person was identified; or
- (b) otherwise—
  - (i) must state the relevant dates and the facts showing service; and
  - (ii) may be made on information given to, or the belief of, the person causing the service; and
  - (iii) if made on information given to the person—must state the source of the information.

**(2)** An affidavit of service must—

- (a) have a copy of the document served attached to it as an exhibit; or
- (b) be written on a copy of the document served; or
- (c) if the document served has been filed—mention the document in a way sufficient to enable the document to be identified.

**Identity of person served**

**36.** 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.

**Special requirements for service by fax**

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

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

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

#### *Subdivision 4—Directions orders*

### **Directions orders**

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

- (2) A directions order may, for example, relate to the following—
- (a) specifying the parties who are to be served with applications, related material or other documents;
  - (b) requiring evidence of the service;
  - (c) another matter relating to service of an application;
  - (d) scheduling of conferences, mediation conferences, preliminary hearings and hearings before the court, commission or registrar;
  - (e) requiring further and better particulars of an application;
  - (f) requiring the applicant to file and serve all material to be relied on in support of the application by affidavit or another form;
  - (g) requiring a party to respond to a notice to admit facts;
  - (h) requiring the respondent to file and serve material in reply;

- (i) requiring the applicant to file and serve material in reply;
- (j) requiring the parties—
  - (i) to confer to agree on matters that can be agreed on; and
  - (ii) to identify points in issue; and
  - (iii) to report back to the court, commission or registrar;
- (k) requiring the parties to file a written outline of submissions or submissions about the subject matter of the application;
- (l) requiring—
  - (i) evidence to be given by affidavit; or
  - (ii) statements to be filed and served, in affidavit form, of the primary evidence of a witness;
- (m) requiring—
  - (i) the identification of the provisions of any relevant legislation or industrial instruments; and
  - (ii) a list of cases to be relied on in support of or in response to proceedings to be provided;
- (n) requiring submissions in writing to justify the necessity to carry out inspections or hearings at other locations;
- (o) requiring disclosure of documents;
- (p) requiring inspection of documents.

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

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

### **Hearing of parties**

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

**Further directions**

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

**Hearing and decision for proceeding on application for directions**

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

**Failure to comply with directions order**

**42.(1)** This rule applies if after receiving notice of a directions order—

- (a) specifying a time, date and place for a hearing or conference, the person notified fails to attend at the hearing or conference; or
- (b) the person notified fails to comply with the order.

**(2)** The court, commission or registrar may do any of the following—

- (a) dismiss the proceeding;
- (b) give the further directions the court, commission or registrar considers appropriate;
- (c) make an order dealing with the proceeding the court, commission or registrar considers appropriate.

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

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

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

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

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

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

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

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

### *Subdivision 6—Evidence and affidavits*

#### **Powers for evidence**

44. 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.

#### **Notice to admit fact or document**

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

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

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

**Evidence on affidavit**

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

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

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

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

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

**Limitation of affidavit**

**47.** A person, in an affidavit, may only make—

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

**Form of affidavit**

**48.** An affidavit must—

- (a) be in the approved form; and
- (b) be in the first person; and
- (c) identify the person making it; and
- (d) state the residential or business address or place of employment of the person making it; and
- (e) be divided into consecutively numbered paragraphs, with each paragraph, as far as practical, confined to a distinct part of the subject matter; and

- (f) state whether the affidavit is sworn or affirmed; and
- (g) if the person swears an affidavit on behalf of another person or entity—state that the person is authorised to swear the affidavit; and
- (h) state the day on which, and place where, it was sworn; and
- (i) be signed by the person making the affidavit in the presence of the person authorised to take the affidavit; and
- (j) be signed by the person making the affidavit and the person taking the affidavit on each page.

### **Exhibits**

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

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

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

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

### **Alterations**

**50.** 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.

### **Certificate of reading or signature for person making affidavit**

**51.(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.

### **Specified time for filing affidavits**

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

### **Scandalous or oppressive matter**

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

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

### ***Subdivision 7—Attendance notice***

#### **Attendance notices**

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

(2) A request for an attendance notice must—

- (a) be in the approved form; and
- (b) state the name or designation by office or position of the person to

whom the attendance notice is directed, unless the court, commission or registrar otherwise directs; and

- (c) be filed; and
- (d) be accompanied by the attendance notice the person making the request wants issued.

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

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

### **Attendance notice to produce**

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

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

### **Inspection of material**

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

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

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

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

### **Setting aside attendance notice**

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

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

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

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

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

(3) The court or commission may treat the failure of a party to pay the person's expenses as a lawful excuse for section 661<sup>10</sup> of the Act.

### **Production by non-party**

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

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

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

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<sup>10</sup> Section 661 (Contempt by witness)

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

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

### **Serving attendance notice**

60. An attendance notice must be served under rule 27.<sup>11</sup>

### ***Subdivision 8—Hearing***

#### **Request for notice of hearing**

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

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

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

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

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

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

62. A commissioner may hear and decide an application under section 278<sup>12</sup> of the Act in the respondent's absence, if the commission is

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<sup>11</sup> Rule 27 (Service of documents)

<sup>12</sup> Section 278 (Power to recover wages and unpaid superannuation contribution etc.)

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.

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

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

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

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

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

### ***Subdivision 9—Discontinuing proceeding***

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

**64.(1)** This rule applies to an application before the court, commission or registrar to which rule 129<sup>13</sup> does not apply.

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

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

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

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<sup>13</sup> Rule 129 (Discontinuing application under Act, s 74)

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

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

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

### **Other discontinuance**

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

### ***Subdivision 10—Costs and expenses***

#### **Costs and expenses**

66.(1) The court or commission may allow costs and expenses, in relation to proceedings to which these rules apply—

- (a) for a proceeding before the commission—on the scale of costs for Magistrates Courts under the *Uniform Civil Procedure Rules 1999*, schedule 3<sup>14</sup> as if it were a proceeding in a Magistrates Court; or
- (b) for a proceeding before the full bench—on the scale of costs for the District Court under the *Uniform Civil Procedure Rules 1999*, schedule 2<sup>15</sup> as if it were a proceeding in the District Court; or
- (c) for a proceeding before the court—on the scale of costs for the Supreme Court under the *Uniform Civil Procedure Rules 1999*,

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<sup>14</sup> *Uniform Civil Procedure Rules 1999*, schedule 3 (Scale of costs—Magistrates Courts)

<sup>15</sup> *Uniform Civil Procedure Rules 1999*, schedule 2 (Scale of costs—District Court)

schedule 1<sup>16</sup> as if it were a proceeding in the Supreme Court; or

(d) on any other basis the court or commission decides.

(2) The court may order that costs and expenses be assessed by the registrar.

(3) The *Uniform Civil Procedure Rules 1999*, chapter 17, part 2<sup>17</sup> applies, with necessary changes, to the assessment of costs as if the costs were assessable under the *Uniform Civil Procedure Rules 1999*.

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

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

67. A certificate under section 336<sup>18</sup> of the Act must be in the approved form.

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

#### **Application for secret ballot**

68. An application for a direction under section 235<sup>19</sup> of the Act to conduct a secret ballot on strike action must be in the non-chapter 12 approved form.

#### **Conducting secret ballot**

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

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

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<sup>16</sup> *Uniform Civil Procedure Rules 1999*, schedule 1 (Scale of costs—Supreme Court)

<sup>17</sup> *Uniform Civil Procedure Rules 1999*, chapter 17 (Costs), part 2 (Costs)

<sup>18</sup> Section 336 (Recovery of amounts under orders)

<sup>19</sup> Section 235 (Secret ballot on strike action)

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

- (a) the registers kept under section 368 or 544<sup>20</sup> of the Act; or
- (b) any other list requested by the returning officer.

**(4)** The returning officer may—

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

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

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

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

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

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

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

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

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

### **Application to declare persons to be employees**

**70.(1)** For section 275<sup>21</sup> of the Act, an application must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the class of persons to be declared employees; and

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<sup>20</sup> Section 368 (Employee register) or 544 (Members and officers registers)

<sup>21</sup> Section 275 (Power to declare persons to be employees)

- (c) state the work performed by the persons; and
- (d) state the industry in which the work is performed; and
- (e) state the nature and effect of the contract for services.

(2) If the contract for services is written or partly written it must be attached as an exhibit to an affidavit filed in support of the application.

### **Application to amend or void contract**

**71.(1)** For section 276<sup>22</sup> of the Act, an application must be in the non-chapter 12 approved form and state how the contract to which the application relates—

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

(2) The application must also state—

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

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

- (a) has not made an application under section 74<sup>23</sup> of the Act for the same matter; and
- (b) is not a person mentioned in section 276(6)(b)<sup>24</sup> of the Act.

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<sup>22</sup> Section 276 (Power to amend or void contracts)

<sup>23</sup> Section 74 (Application for reinstatement)

<sup>24</sup> Section 276 (Power to amend or void contracts)

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

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

72. An application for an injunction under section 277<sup>25</sup> of the Act must—

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

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

73.(1) An application for an order for the payment of an amount under section 278<sup>26</sup> of the Act must be in the approved form and—

- (a) state the industrial instrument involved or other basis for the claim; and
- (b) state the nature of the work undertaken by the employee the subject of the claim; and
- (c) state that the applicant and any other person eligible to make an application under section 278(3) of the Act in relation to the employee has not made an application under section 399 or 408<sup>27</sup> of the Act for the same matter; and
- (d) state details, in itemised form, of the applicant's claim; and
- (e) state the dates the amounts claimed became payable; and
- (f) state the total amount claimed;<sup>28</sup> and

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<sup>25</sup> Section 277 (Power to grant injunctions)

<sup>26</sup> Section 278 (Power to recover unpaid wages and superannuation contribution etc.)

<sup>27</sup> Section 399 (Recovery of unpaid wages etc.) or 408 (Recovery of unpaid superannuation contribution)

<sup>28</sup> Under the Act, section 278 (Power to recover unpaid wages and superannuation contribution etc.) a claim can not be made for more than \$20 000.

- (g) show how each calculation was made; and
- (h) provide the following information—
  - (i) the employer's name, address and phone and fax number (if any);
  - (ii) if the employer is a business—a contact name for the employer;
  - (iii) if the employer has no phone—a way the employer may be contacted by phone.

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

### **Orders about representation rights of employee organisations**

74. An application under section 279<sup>29</sup> of the Act for an order about a demarcation dispute must be in the non-chapter 12 approved form.

### **Application to reopen**

75. An application to reopen proceedings under section 280<sup>30</sup> of the Act must be in the non-chapter 12 approved form and state the grounds relied on.

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

76. An application to refer a matter to a full bench under section 281(3)<sup>31</sup> of the Act must be in the non-chapter 12 approved form, unless the president or registrar approves otherwise.

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

77.(1) An application for an interpretation of an industrial instrument

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<sup>29</sup> Section 279 (Orders about representation rights of employee organisations)

<sup>30</sup> Section 280 (Procedures for reopening)

<sup>31</sup> Section 281 (Reference to full bench)

under section 284<sup>32</sup> of the Act must—

- (a) be in the non-chapter 12 approved form; and
  - (b) state the title of any relevant Act, industrial instrument or related document and the number of the section or clause under which the question arises; and
  - (c) state the questions to be answered; and
  - (d) be accompanied by a statement, signed by all parties to the proceeding, of the agreed facts relied on for the application.
- (2) Subrule (1)(d) does not apply to an application by an inspector.

### **Application for reinstatement of training contract cancelled by coercion**

**78.** An application for an order under the *Training and Employment Act 2000*, section 62<sup>33</sup> must be in the non-chapter 12 approved form.

## *Division 4—Practice*

### *Subdivision 1—Court and commission*

#### **Using recording devices**

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

#### **Practice notes**

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

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<sup>32</sup> Section 284 (Interpretation of industrial instruments)

<sup>33</sup> *Training and Employment Act 2000*, section 62 (Reinstatement of training contract cancelled by coercion)

**Joining matters**

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

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

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

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

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

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

**Commission acting on own initiative**

**82.** 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.

**Extension or shortening of time**

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

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

**Exhibits not to be taken out**

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

**Correcting errors**

**85.(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.

**Continuance of proceedings—death of party**

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

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

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

**Publishing decisions etc.**

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

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

**(2)** Despite subrule (1)(a), the registrar must not publish a decision or interpretation about a QWA or ancillary document in a way that discloses

the identity of either party to the QWA or document.

(3) The registrar must publish a certified agreement, or amendment of a certified agreement, if the commission directs.

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

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

### *Subdivision 2—Registry*

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

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

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

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

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

#### **Powers**

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

- (a) call persons by attendance notice; and
- (b) take affidavits; and
- (c) examine parties and witnesses; and
- (d) adjourn a matter or hearing; and
- (e) amend or give leave to amend an application, notice, or other proceeding; and

- (f) extend the time prescribed for lodging a document or doing an act (whether or not the time has expired); and
- (g) make an order about the following—
  - (i) an application in a proceeding to be taken before the hearing;
  - (ii) the costs of an application in a proceeding;
  - (iii) the issues to be submitted to the court or commission;
  - (iv) the naming and joining of parties;
  - (v) the persons to be served with notice of proceedings;
  - (vi) particulars of the claims of parties;
  - (vii) a notice to admit facts or documents;
  - (viii) disclosure;
  - (ix) inspection of documents;
  - (x) examination of witnesses;
  - (xi) the place, time and nature of a hearing.

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

## **PART 3—PROCEEDINGS BEFORE INDUSTRIAL MAGISTRATES**

### *Division 1—Proceedings for claims*

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

**90.(1)** This division applies to the following claims—

- (a) a claim under section 399<sup>34</sup> of the Act;

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<sup>34</sup> Section 399 (Recovery of unpaid wages etc.)

- (b) a claim for damages sustained by an employee because the employer failed to pay the employee's wages;
- (c) a claim under chapter 11, part 2, division 2 of the Act;<sup>35</sup>
- (d) a claim for unpaid superannuation under section 408<sup>36</sup> of the Act;
- (e) a claim for compensation under section 83<sup>37</sup> of the Act;
- (f) a claim for damages for breach of an agreement made under an industrial instrument;
- (g) a claim for the recovery of penalties and amounts payable to WorkCover Queensland under the *WorkCover Queensland Act 1996*.

### **Starting a claim**

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

### **Procedure for claims before industrial magistrate**

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

**(2)** However, the time for starting a proceeding under section 399 or 408<sup>38</sup> of the Act is the time allowed under those sections and not under the *Justices Act 1886*.

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<sup>35</sup> Chapter 11 (Records and wages), part 2 (Wages and occupational superannuation), division 2 (Protection for wages)

<sup>36</sup> Section 408 (Recovery of unpaid superannuation contribution)

<sup>37</sup> Section 83 (What employer must do to dismiss employee)

<sup>38</sup> Section 399 (Recovery of unpaid wages etc.) or 408 (Recovery of unpaid superannuation contribution)

(3) Also, the time for starting a claim under the *WorkCover Queensland Act 1996* is the time allowed under that Act and not under the *Justices Act 1886*.

### Substituted service

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

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

*Example—*

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

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

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

### Summons

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

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

(3) For a proceeding under the *WorkCover Queensland Act 1996* mentioned in rule 90(1)(g), the summons must require the respondent to appear before an industrial magistrate at—

- (a) the court in the Magistrates Courts district in which the respondent resides or has its registered office; or

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

(4) The *Justices Act 1886*, section 56<sup>39</sup> applies to service of a summons as if an application for a claim were a complaint for a simple offence.

### **Alternative dispute resolution process applies**

95. The *Uniform Civil Procedure Rules*, chapter 9, part 4<sup>40</sup> apply to a claim made under rule 90 with necessary changes.

### **Directions orders**

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

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

- (a) specifying the parties who are to be served with applications, related material or other documents;
- (b) requiring evidence of the service;
- (c) another matter relating to service of an application;
- (d) scheduling of conferences, mediation conferences, preliminary hearings and hearings;
- (e) requiring further and better particulars of an application;
- (f) requiring the applicant to file and serve all material to be relied on in support of the application by affidavit or another form;
- (g) requiring a party to respond to a notice to admit facts;
- (h) requiring the respondent to file and serve material in reply;
- (i) requiring the applicant to file and serve material in reply;

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<sup>39</sup> *Justices Act 1886*, section 56 (Service of summonses)

<sup>40</sup> *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

- (j) requiring the parties—
  - (i) to confer to agree on matters that can be agreed on; and
  - (ii) to identify points in issue; and
  - (iii) to report back to the industrial magistrate;
- (k) requiring the parties to file a written outline of submissions or submissions about the subject matter of the application;
- (l) requiring—
  - (i) evidence to be given by affidavit; or
  - (ii) statements to be filed and served, in affidavit form, of the primary evidence of a witness;
- (m) requiring—
  - (i) the identification of the provisions of any relevant legislation or industrial instruments; and
  - (ii) a list of cases to be relied on in support of or in response to proceedings to be provided;
- (n) requiring disclosure of documents;
- (o) requiring inspection of documents.

### **Onus of proof**

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

### **Adjournment**

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

### **Enforcement of order**

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

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

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

(3) The certificate must be signed by—

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

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

### *Division 2—Costs and expenses*

#### **Costs and expenses**

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

## **PART 4—LAWYERS, AGENTS AND OTHER REPRESENTATIVES**

#### **Representation in proceedings**

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

- (a) the party or person; or
- (b) the party's or person's lawyer or agent; or

- (c) if the party or person is an organisation or association—an officer or member of the organisation or association.

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

**102.(1)** An agent may be appointed under section 319(1)(a)<sup>41</sup> of the Act only by—

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

**(2)** Subrule (1)(a) applies only if the notice has not already accompanied a document that has been filed.<sup>42</sup>

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

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

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

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

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

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

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<sup>41</sup> Section 319 (Representation of parties)

<sup>42</sup> For the requirement for a notice to accompany a document for filing, see rule 12 (General requirements for documents for filing)

**Change of lawyer or agent**

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

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

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

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

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

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

**No representation by struck off or suspended lawyers**

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

**PART 5—APPEALS***Division 1—General***Application of pt 5**

**108.** This part applies to an appeal—

- (a) from a decision of the full bench, commission, an industrial magistrate or the registrar; or

- (b) to the commission against a stand-down; or
- (c) under the *Training and Employment Act 2000*, section 230.<sup>43</sup>

### **Record for appeal**

**109.(1)** For an appeal from a decision of the commission or registrar or under the *Training and Employment Act 2000*, section 230 the record consists of the following—

- (a) the application to appeal;
- (b) the documents starting the appeal;
- (c) any of the following that is the subject of the appeal—
  - (i) an order;
  - (ii) an industrial instrument;
  - (iii) a training contract;
  - (iv) a registered training contract;
  - (v) a completion certificate;
  - (vi) a qualification or statement of attainment;
  - (vii) a declaration, variation of a declaration or refusal to vary a declaration of a prohibited employer;
  - (viii) an information notice given under section 230(3) of that Act;
- (d) any published reasons for the decision being appealed;
- (e) any transcript or notes of oral evidence made in the proceedings;
- (f) the list of exhibits and the exhibits in the proceedings;
- (g) any affidavit or statement of evidence;
- (h) any representations made in response to a show cause notice;
- (i) the decision appealed, including the reasons for the decision;
- (j) any industrial instrument or statement of principle mentioned in the decision, including reasons.

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<sup>43</sup> *Training and Employment Act 2000*, section 230 (Appeal to industrial commission against council or other decisions)

(2) The commission may direct that the record be supplemented by other material.

(3) Any party to the appeal may seek a direction under subrule (2).

### **Applications for stay of decision under appeal**

**110.(1)** An application for an order under section 347<sup>44</sup> of the Act or the *Training and Employment Act 2000*, section 231<sup>45</sup> must include—

- (a) details of the interest of the person applying; and
- (b) any other facts and circumstances relevant to the exercise of the jurisdiction of the tribunal.

(2) The application must not form part of—

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

### **Service of application to appeal or leave to appeal**

**111.(1)** An application to appeal or an application for leave to appeal must be served by the appellant on all respondents to the appeal and on anyone else the appeal tribunal may direct.<sup>46</sup>

(2) The appellant must serve the application within 7 days after the day the application is filed.

(3) An affidavit of service of the application must be filed within 7 days after the day of service.

(4) An application to appeal or an application for leave to appeal may be served on a party at the party's address for service in the proceedings in which the decision appealed from was given.

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<sup>44</sup> Section 347 (Stay of decision appealed against)

<sup>45</sup> *Training and Employment Act 2000*, section 231 (Stay of decision being appealed)

<sup>46</sup> See part 2 (Industrial tribunals and registry), division 2 (Procedures of industrial tribunals), subdivision 3 (Service) for the requirements about service of the appeal.

(5) If the council is a respondent to the appeal, it is enough for subrule (1) if the appellant serves the application to appeal on the council.

### **Service of application if respondent is the council**

**112.(1)** This rule applies if—

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

(2) The council must serve a copy of the documents mentioned in rule 109(1)(c) and (i) on the appellant and any other person who may be directly affected by the relief sought in the appeal.

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

### **Failure to prosecute appeal**

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

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

### ***Division 2—Appeal to court, full bench or commission***

#### **Application to appeal to court, full bench or commission**

**114.(1)** An appeal must be started by filing in the appropriate registry an application to appeal in the approved form.

(2) The application to appeal must—

- (a) state the name and last known address of each respondent or other

- party; and
- (b) state whether the appeal is from all or part (and which part) of the decision; and
  - (c) state concise grounds of the appeal; and
  - (d) state the decision the appellant wants instead of the decision appealed from; and
  - (e) if the appeal is from a decision of the full bench—state whether the president was a member of the bench.

### **Application for leave to appeal to full bench**

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

**(2)** An application under section 342(1) or (2)<sup>47</sup> of the Act must state—

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

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

### **Application refused**

**116.** If the full bench refuses to grant leave to appeal—

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

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<sup>47</sup> Section 342 (Appeal from commission, magistrate or registrar)

**Response**

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

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

**(2)** The response must—

- (a) be filed in the registry; and
- (b) served on all other parties within 21 days of the day of service of the application or the further time the full bench may direct.

**Application to appeal to full bench from registrar**

**118.(1)** An application to appeal under section 342(6) or (7)<sup>48</sup> of the Act must state—

- (a) the name and last known address of each respondent or other party; and
- (b) the grounds of the appeal; and
- (c) that the appeal is not in relation to a decision mentioned in section 287(9)<sup>49</sup> of the Act; and
- (d) that the appeal is not in relation to a decision mentioned in section 695<sup>50</sup> of the Act.

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

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

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<sup>48</sup> Section 342 (Appeal from commission, magistrate or registrar)

<sup>49</sup> Section 287 (General rulings)

<sup>50</sup> Section 695 (Student's work permit)

### ***Division 3—Appeals from industrial magistrate***

#### **Filing and service of application to appeal**

**119.** An application to appeal from a decision of an industrial magistrate must—

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

#### **Appellant to give undertaking**

**120.(1)** At the time of filing an application to appeal, the appellant must give an undertaking before a justice for the amount and with the sureties (if any) the justice may require—

- (a) to appear on the hearing of the appeal; and
- (b) to abide by the decision of the court; and
- (c) to pay the costs the court may order.

**(2)** If the appellant is in custody in relation to the subject matter of the proceedings under appeal, a justice may order the appellant's release on the undertaking mentioned in subrule (1).

**(3)** Subrule (2) applies only if the appellant is not in custody on another matter.

**(4)** For an appellant who is released from custody on the undertaking, if the appellant's appeal is unsuccessful, the appellant must immediately present himself or herself to a Magistrates Court to re-enter custody.

#### **Documents**

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

- (a) the application to appeal;

- (b) the application for a claim or complaint;
- (c) the undertaking given by the appellant under rule 120;
- (d) the depositions;
- (e) the exhibits, if practicable;
- (f) the records of the proceeding, including any other proceeding, before the industrial magistrate;
- (g) the industrial magistrate's decision.

## **PART 6—GENERAL CONDITIONS OF EMPLOYMENT**

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

**122.(1)** An application for an order under chapter 2, part 5<sup>51</sup> of the Act must be in the non-chapter 12 approved form.

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

## **PART 7—DISMISSALS**

### **Application for reinstatement**

**123.(1)** An application for reinstatement under section 74(2)<sup>52</sup> of the Act

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<sup>51</sup> Chapter 2 (General employment conditions), part 5 (Equal remuneration for work of equal or comparable value)

<sup>52</sup> Section 74 (Application for reinstatement)

must be filed in the approved form.

(2) The applicant must—

- (a) serve a copy of the application on the employer within 7 days after filing the application; and
- (b) file an affidavit of service in the approved form within 7 days after serving the application.

### **Application for compensation order**

**124.** An application for an order for compensation under section 83(4)(b)<sup>53</sup> of the Act must be in the non-chapter 12 approved form.

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

**125.(1)** An application for an order under section 87<sup>54</sup> of the Act must be in the non-chapter 12 approved form.

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

### **Application for order for contravention of Act, s 88**

**126.(1)** An application for an order under section 88<sup>55</sup> of the Act must be in the non-chapter 12 approved form.

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

- (a) the name of the organisation; and
- (b) the facts it is alleged constitute the contravention of section 88 of the Act.

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<sup>53</sup> Section 83 (What employer must do to dismiss employee)

<sup>54</sup> Section 87 (Orders about severance allowances and other separation benefits)

<sup>55</sup> Section 88 (Employer must give notice of proposed dismissals)

**Application for order for contravention of Act, s 89**

**127.(1)** An application for an order under section 89<sup>56</sup> of the Act must be in the non-chapter 12 approved form.

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

- (a) the name of the organisation; and
- (b) the facts it is alleged constitute the contravention of section 89 of the Act.

**Application for reinstatement order for injured employee**

**128.** An application under section 95(4)<sup>57</sup> of the Act for a reinstatement order must be in the non-chapter 12 approved form.

**Discontinuing application under Act, s 74**

**129.(1)** This rule applies to an application under section 74<sup>58</sup> of the Act.

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

**(3)** The notice may be filed by fax.

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

**(5)** Unless the application is discontinued at a conference held under section 75<sup>59</sup> of the Act, the applicant must serve the notice on the other parties to the proceeding immediately.

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

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<sup>56</sup> Section 89 (Employer must consult with employee organisations about dismissals)

<sup>57</sup> Section 95 (Reinstatement of injured employees)

<sup>58</sup> Section 74 (Application for reinstatement)

<sup>59</sup> Section 75 (Conciliation before application heard)

## **PART 8—FREEDOM OF ASSOCIATION**

### **Application for exemption from membership**

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

**(2)** The letter must state the following—

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

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

**131.(1)** An application for an order under section 120<sup>60</sup> of the Act must be in the non-chapter 12 approved form.

**(2)** The application must be accompanied by an affidavit that states—

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

**(3)** If the application is made by an industrial association for an entity entitled to apply under section 117(a)<sup>61</sup> of the Act, the affidavit must also

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<sup>60</sup> Section 120 (Remedies)

<sup>61</sup> Section 117 (Who may apply)

state that the entity is a member or is eligible to become a member of the industrial association.

## **PART 9—AWARDS**

### **Exemptions**

**132.** An application under section 132<sup>62</sup> of the Act must be in the non-chapter 12 approved form.

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

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

## **PART 10—CERTIFIED AGREEMENTS**

### **Advice of intention to begin negotiations for a project agreement**

**133.** Written advice under section 143(2)(b)<sup>63</sup> of the Act must be filed before negotiations start.

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

**134.(1)** An application for a certificate under section 152<sup>64</sup> of the Act must be made before the agreement is made.

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

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<sup>62</sup> Section 132 (Exemptions)

<sup>63</sup> Section 143 (Proposed parties to be advised when agreement is proposed)

<sup>64</sup> Section 152 (Certificate as to requested representation)

**(3)** An affidavit accompanying the application must state—

(a) for an application by an employee organisation—

(i) the name, address and membership number of each employee who has requested representation by the organisation under section 144<sup>65</sup> of the Act; and

(ii) the date of the request; and

(iii) the calling of each employee; or

(b) for an application by an employer—

(i) the name and address of each employee who has withdrawn a request for representation by their organisation and the date of the withdrawal; or

(ii) the circumstances in section 144(4) of the Act that apply to each relevant employee.

**(4)** The applicant must not serve an affidavit under subrule (3)(a) on the employer.

**(5)** The certificates under section 152(1) and (2)<sup>66</sup> of the Act must be in the approved form.

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

**135.** A notice under section 177(1)(c)<sup>67</sup> of the Act must be in the approved form.

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

**136.** For section 148(1)(a)<sup>68</sup> of the Act, a request to the commission for help to make a certified agreement must be made in the approved form.

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<sup>65</sup> Section 144 (What is to be done when an agreement is proposed)

<sup>66</sup> Section 152 (Certificate as to requested representation)

<sup>67</sup> Section 177 (Industrial action must be properly authorised)

<sup>68</sup> Section 148 (Assistance in negotiating by conciliation)

**Request for arbitration**

**137.** For section 149(1)(c)<sup>69</sup> of the Act, a request for the commission to determine a matter by arbitration must—

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

**Application for decision about designated award**

**138.** For section 163<sup>70</sup> of the Act, an application must be in the non-chapter 12 approved form.

**Application for certification**

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

- (a) be in the approved form; and
- (b) be signed by or for all parties to the agreement; and
- (c) be accompanied by the original and 2 copies of the proposed certified agreement;<sup>71</sup> and
- (d) if there is or was a certified agreement or agreements covering some or all of the employees to be covered by the agreement, state—
  - (i) the name and agreement number of the certified agreement or agreements; and
  - (ii) whether the new certified agreement replaces the existing agreement or agreements.

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<sup>69</sup> Section 149 (Arbitration if conciliation unsuccessful)

<sup>70</sup> Section 163 (Deciding designated awards)

<sup>71</sup> For the form of an affidavit to accompany an agreement, see the regulation, section 9 (Agreement for certification to be accompanied by affidavit—Act, s 156).

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

### **Form of agreement for certification**

**140.** An agreement filed with an application for certification of an agreement must—

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

### **Application to extend certified agreement**

**141.(1)** For section 168<sup>72</sup> of the Act, an application to extend the nominal expiry date of a certified agreement must be in the approved form.

(2) The application must be accompanied<sup>73</sup> by an affidavit by each applicant stating—

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

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<sup>72</sup> Section 168 (Extending a certified agreement)

<sup>73</sup> For further requirements for an application see rule 77 (Application for interpretation of industrial instrument)

- (b) the steps taken to ensure that section 185<sup>74</sup> of the Act has not been contravened; and
- (c) that a valid majority of the relevant employees at the time approve the extension.

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

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

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

**142.(1)** An application for approval of an amendment of a certified agreement under section 169<sup>75</sup> of the Act must be in the approved form.

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

- (a) the name of the relevant or designated award; and
- (b) the nominal expiry date of the amended certified agreement; and
- (c) the steps taken to ensure—
  - (i) the commission is satisfied as required by section 169(3)(a) of the Act; and
  - (ii) section 185<sup>76</sup> of the Act has not been contravened; and
- (d) where the procedures for preventing and settling disputes can be found in the agreement; and
- (e) the names of the persons who negotiated the amendment and the persons for whom they acted.

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

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<sup>74</sup> Section 185 (Coercion of persons to make, amend or terminate certified agreements etc.)

<sup>75</sup> Section 169 (Amending a certified agreement)

<sup>76</sup> Section 185 (Coercion of persons to make, amend or terminate certified agreements etc.)

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

(5) For an application to which section 170(2)<sup>77</sup> of the Act applies, the affidavit accompanying the application must have a copy of the request under section 170(1)(a) of the Act for an amendment from 1 or more employees to the employer attached as an exhibit to the affidavit.

### **Determination made under s 149**

**143.(1)** For section 150(5)<sup>78</sup> of the Act, a notice of revocation of a determination under section 149<sup>79</sup> of the Act must be in the approved form.

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

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

### **Notice of termination of agreement**

**144.(1)** A notice under section 172 or 173(2)<sup>80</sup> of the Act must be in the approved form.

(2) A notice under section 172 of the Act must be accompanied by an affidavit by each applicant stating that a valid majority of the relevant employees at the time approve the agreement's termination.

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<sup>77</sup> Section 170 (Amendment if discrimination between unionists and non-unionists)

<sup>78</sup> Section 150 (Determinations made under s 149)

<sup>79</sup> Section 149 (Arbitration if conciliation unsuccessful)

<sup>80</sup> Section 172 (Terminating certified agreement on or before its nominal expiry date) or 173 (Terminating agreement after its nominal expiry date)

## **PART 11—QUEENSLAND WORKPLACE AGREEMENTS**

### **Application for determination of designated award**

**145.** An application under section 212<sup>81</sup> of the Act must be in the non-chapter 12 approved form.

### **Requirements for QWA and ancillary documents**

**146.(1)** A QWA must be—

- (a) in the approved form;<sup>82</sup> and
- (b) accompanied by—
  - (i) employer details in the approved form completed by the employer; and
  - (ii) employee details in the approved form for each employee who made the agreement, completed by the employer.

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

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

**(3)** A QWA, whether or not it replaces another QWA, must be signed by all parties to it.<sup>83</sup>

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<sup>81</sup> Section 212 (Deciding designated awards)

<sup>82</sup> For further requirements about QWAs see the regulation, part 5 (Queensland workplace agreements).

<sup>83</sup> Certain persons can not witness a party's signature on a QWA or ancillary document. See the regulation, section 15 (Witnessing signatures on QWA or ancillary document—Act, s 709(2)(d)).

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

### **Filing QWA or ancillary document by fax**

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

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

### **Application for injunction**

**148.** An application under section 221<sup>84</sup> of the Act must—

- (a) be in the non-chapter 12 approved form; and
- (b) state the facts it is alleged constitute the contravention, or anticipated contravention, of chapter 6, part 2<sup>85</sup> of the Act.

## **PART 12—INDUSTRIAL DISPUTES**

### **Notice of industrial dispute**

**149.(1)** A notice under section 229(2)<sup>86</sup> of the Act must state—

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

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<sup>84</sup> Section 221 (Injunctions)

<sup>85</sup> Chapter 6 (Agreements), part 2 (Queensland workplace agreements)

<sup>86</sup> Section 229 (Notice of industrial dispute)

(e) whether any dispute settling procedures apply and have been followed.

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

(3) Rules 11 and 12<sup>87</sup> do not apply to the notice.

### **Applications for order for contravention of Act, s 238**

**150.(1)** An application for an order under section 239<sup>88</sup> of the Act must be in the non-chapter 12 approved form.

(2) An affidavit accompanying the application must state the facts it is alleged constitute a contravention of section 238<sup>89</sup> of the Act.

### **Mediation by commission**

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

- (a) to help the parties resolve the dispute; or
- (b) to ensure all avenues of resolution have been explored before proceeding to arbitration; or
- (c) to facilitate the conduct of any necessary arbitration proceedings by exploring ways of effectively conducting hearings; or
- (d) to help the parties resolve any other outstanding issues.

(2) The commission may resolve other outstanding issues only if—

- (a) the commission considers the mediation is desirable in the public interest; and
- (b) all parties to the cause—

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<sup>87</sup> Rules 11 (Document starting proceedings to state address and phone and fax number) and 12 (General requirements for documents for filing)

<sup>88</sup> Section 239 (Orders the commission may make)

<sup>89</sup> Section 238 (Payments for strikes can not be compelled)

- (i) consent; and
  - (ii) agree on the specific issues to be dealt with in the consultation process; and
  - (iii) agree to accept any resolution achieved by the process, including consenting to any formal orders.
- (3) The commission may direct a record be taken of the mediation.
- (4) The consent of a party to the commission resolving other outstanding issues can not be withdrawn other than with the leave of the commission.
- (5) The outcome of the mediation—
- (a) may be incorporated in the record or issued separately in writing; and
  - (b) may be given effect by—
    - (i) an order of the commission; or
    - (ii) another way the commission considers appropriate.
- (6) The commission may stop acting under this rule at any time.
- (7) This rule does not limit the jurisdiction of, or the obligations placed on, the commission by chapter 7, part 2<sup>90</sup> of the Act.

### **Notice to show cause**

**152.** A notice under section 233(7)<sup>91</sup> of the Act must be in the approved form.

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<sup>90</sup> Chapter 7 (Industrial disputes), part 2 (Action for settling industrial disputes)

<sup>91</sup> Section 233 (Enforcing commission's orders)

## **PART 13—RECORDS AND WAGES**

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

**153.(1)** An application for an authority under section 364<sup>92</sup> of the Act must be in the approved form.

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

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

## **PART 14—INDUSTRIAL ORGANISATIONS**

### *Division 1—Registration*

#### **Applications for registration**

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

- (a) an application for registration as an employee organisation under section 414(1)<sup>93</sup> of the Act;
- (b) an application for registration as an employer organisation under section 414(1) of the Act;
- (c) an application for registration as an employer organisation under section 414(2) of the Act by a corporation.

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<sup>92</sup> Section 364 (Authorising industrial officers)

<sup>93</sup> Section 414 (Who may apply)

### **Notice of objection to registration application**

**155.** For section 418<sup>94</sup> of the Act, notice of objection to an application for registration as an organisation must be in the approved form.<sup>95</sup>

### **Answering objections**

**156.** A written response by an applicant to an objection to an application for registration must be filed in the approved form.<sup>96</sup>

## ***Division 2—Change of callings***

### **Application to change callings**

**157.** An application to change the list of callings of an organisation under section 427<sup>97</sup> of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) state that the existing rules of the organisation have been complied with in making the application and the change; and
- (c) show how the change was proposed and approved in accordance with the organisation's rules; and
- (d) describe the nature and effect of the change; and
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application; and
- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the change.<sup>98</sup>

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<sup>94</sup> Section 418 (Right to object)

<sup>95</sup> See also the regulation, section 28 (Notice of objection).

<sup>96</sup> See also the regulation, section 29 (Answering objections—Act s 654)

<sup>97</sup> Section 427 (Change of callings)

<sup>98</sup> See also the regulation sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

***Division 3—Election rules******Subdivision 1—Ballot not to be postal ballot*****Application for approval for a ballot not to be a postal ballot**

**158.(1)** For section 447(1)<sup>99</sup> of the Act, an application to the registrar for approval for a ballot not to be a postal ballot must be in the chapter 12 approved form.

**(2)** The application must also—

- (a) contain particulars of the proposed amendment to the organisation's rules to provide for a secret ballot that is not a postal ballot; and
- (b) state that the proposed amendment of the rules are not contrary to the Act or to law; and
- (c) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (d) give details of how it is believed taking a ballot under the proposed rules will be likely to result in a higher participation by the members in the ballot than would result from a postal ballot; and
- (e) give details of how it is believed taking a ballot under the proposed rules will give members eligible to vote an adequate opportunity to vote without intimidation; and
- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment.<sup>100</sup>

**Application for cancellation of approval**

**159.** For section 450(a)<sup>101</sup> of the Act, an application by an organisation to

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<sup>99</sup> Section 447 (Approval application)

<sup>100</sup> See also the regulation, section 19 (Applications to industrial tribunals)

<sup>101</sup> Section 450 (Cancellation of approval)

cancel an approval for a ballot to decide the result of its elections for its officers not to be a postal ballot must be in the chapter 12 approved form.

*Subdivision 2—Validity of, or compliance with, rules*

**Application about validity of, or compliance with, rules**

**160.** An application under section 459(1)<sup>102</sup> of the Act must be in the approved form.

*Subdivision 3—Changing names and other amendments*

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

**161.** An application for an order under section 472<sup>103</sup> of the Act must be in the chapter 12 approved form.

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

**162.** An application for an order under section 473<sup>104</sup> of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) describe the nature and effect of the amendment; and
- (d) state that the new name is not the same as another organisations' name or so similar to the name of another organisation so as to be likely to cause confusion; and
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application; and

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<sup>102</sup> Section 459 (Powers of court)

<sup>103</sup> Section 472 (Approval to change 'union' to 'organisation' in name)

<sup>104</sup> Section 473 (Approval for other name amendment)

- (f) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment.<sup>105</sup>

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

**163.(1)** An application for an order under section 474<sup>106</sup> of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) describe the nature and effect of the amendment; and
- (d) attach a copy of a resolution passed in accordance with the organisation's rules agreeing to the amendment; and
- (e) be under the organisation's seal or be signed by 2 of the organisation's officers authorised to sign the application.<sup>107</sup>

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

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

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<sup>105</sup> See also the regulation, sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

<sup>106</sup> Section 474 (Approval for eligibility rule amendment)

<sup>107</sup> See also the regulation, sections 19 (Applications to industrial tribunal) and 20 (Applications for registration, change of list of callings or amendment of name or eligibility rules).

**Application for approval of other amendment to rules**

**164.** An application for the registrar's approval under section 477<sup>108</sup> of the Act must—

- (a) be in the chapter 12 approved form; and
- (b) show how the amendment was proposed and approved in accordance with the organisation's rules; and
- (c) have attached a schedule divided into 3 columns containing—
  - (i) the present registered rule in column 1; and
  - (ii) an exact description of the amendment sought detailing the words or paragraphs to be deleted or inserted and including any consequential amendments, for example, renumbering, in column 2; and
  - (iii) the proposed new rule incorporating the amendment detailed in column 2 in column 3; and
- (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.

**Notice of objection to amendment of name or eligibility rules or change of callings**

**165.** A notice of objection to an application to amend a name or eligibility rules or change of callings under section 654(3)<sup>109</sup> of the Act must be in the approved form.<sup>110</sup>

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<sup>108</sup> Section 477 (Application of sdiv 2)

<sup>109</sup> Section 654 (Hearing to be given before making decision)

<sup>110</sup> See also the regulation, section 28 (Notice of objection).

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

**166.** An application for an election inquiry under chapter 12, part 8<sup>111</sup> of the Act must—

- (a) be in the approved form; and
- (b) state that the applicant is a financial member of the organisation or was a financial member of the organisation within 1 year before the application was made; and
- (c) state the date the prescribed information for the election was filed under section 481<sup>112</sup> of the Act; and
- (d) if the election has ended—state the date the election ended.

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

**167.** The copy of the officers register required to be filed under section 547<sup>113</sup> of the Act before 31 March in each year must—

- (a) be in the approved form; and
- (b) contain details of all officers<sup>114</sup> of the organisation and its branches.

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<sup>111</sup> Chapter 12 (Industrial organisations), part 8 (Election inquiries)

<sup>112</sup> Section 481 (Organisation or branch must file prescribed election information)

<sup>113</sup> Section 547 (Annual obligation to file officers register)

<sup>114</sup> For the meaning of “officer” see the Act, section 409 (Definitions for ch 12).

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

**168.** An application under section 580<sup>115</sup> of the Act for an exemption from holding an election must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of any report or certificate required under the Commonwealth Act for the counterpart federal body's election that the application is about, certified by the president or secretary of the body as being a true copy.<sup>116</sup>

**Application for exemption from keeping officers and members register**

**169.** An application under section 582<sup>117</sup> of the Act for an exemption from keeping a register must be in the chapter 12 approved form.

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

**170.** An application under section 586<sup>118</sup> of the Act for an exemption must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of the most recent report, accounts, statements and other documents lodged under the Commonwealth Act, section 280<sup>119</sup> for the counterpart federal body, certified by the president or secretary of the body as being a true copy; and

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<sup>115</sup> Section 580 (Exemption if federal election held)

<sup>116</sup> See also the regulation, section 22 (Application for exemption under Act, s 580).

<sup>117</sup> Section 582 (Exemption)

<sup>118</sup> Section 586 (Who may apply)

<sup>119</sup> *Workplace Relations Act 1996* (Cwlth), section 280 (Reports etc. to be lodged in Industrial Registry)

- (c) be accompanied by a copy of a letter from the Australian Commission to the counterpart federal body acknowledging the lodgment of the documents.

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

**171.** An application under section 590<sup>120</sup> of the Act for an exemption must—

- (a) be in the chapter 12 approved form; and
- (b) be accompanied by a copy of the most recent financial report, director's report and auditor's report lodged by the applicant under the Corporations Law.

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

**172.** An application under section 594<sup>121</sup> of the Act for an exemption must be in the chapter 12 approved form.

## *Division 5—Amalgamations*

### *Subdivision 1—Procedures for amalgamation*

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

**173.** An application to submit a proposed amalgamation to a ballot must be in the chapter 12 approved form.<sup>122</sup>

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<sup>120</sup> Section 590 (Who may apply)

<sup>121</sup> Section 594 (Who may apply)

<sup>122</sup> See also the regulation, section 64 (Application to submit proposed amalgamation to a ballot).

**Notice of objection about amalgamations involving extending eligibility rules**

**174.** A notice of objection to an application under the regulation, section 64 must be in the approved form.<sup>123</sup>

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

**175.** An application to submit a proposed withdrawal to a ballot must be in the chapter 12 approved form.<sup>124</sup>

**Application for exemption—number of members**

**176.** An application by a proposed amalgamated organisation for an exemption from the requirement to hold a ballot for the amalgamation must be in the approved form.<sup>125</sup>

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

**177.** An application for an exemption from the requirement to hold a ballot if the counterpart federal bodies of the organisations proposing to amalgamate have amalgamated must be in the approved form.<sup>126</sup>

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<sup>123</sup> See also the regulation, sections 76 (Objections about amalgamations involving extending eligibility rules) and 79 (Notice of objection).

<sup>124</sup> See also the regulation, section 65 (Application to submit proposed withdrawal to a ballot).

<sup>125</sup> See also the regulation, section 66 (Amalgamation ballot exemption—number of members).

<sup>126</sup> See also the regulation, section 67 (Amalgamation ballot exemption—recognising federal ballot).

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

**178.** A notice of objection to an amalgamation ballot exemption under the regulation, section 67 must be in the approved form.<sup>127</sup>

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

**179.** An application for an exemption from the requirement to hold a withdrawal ballot must be in the approved form.<sup>128</sup>

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

**180.** A notice of objection to an application for a withdrawal ballot exemption under the regulation, section 68 must be in the approved form.<sup>129</sup>

**Answering objections**

**181.** A statement in answer to a notice of objection under the regulation, section 79 must be in the approved form.<sup>130</sup>

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

**182.** An application for approval for an amalgamation ballot that is not a postal ballot must be in the approved form.<sup>131</sup>

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<sup>127</sup> See also the regulation, sections 77 (Objection to amalgamation ballot exemption—recognising federal ballot) and 79 (Notice of objection).

<sup>128</sup> See also the regulation, section 68 (Withdrawal ballot exemption—recognising federal ballot).

<sup>129</sup> See also the regulation, sections 78 (Objection to withdrawal ballot exemption—recognising federal ballot) and 79 (Notice of objection).

<sup>130</sup> See also the regulation, section 80 (Answering objection).

<sup>131</sup> See also the regulation, section 69 (Application for alternative ballot).

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

**183.** An application for approval for a withdrawal ballot that is not a postal ballot must be in the approved form.<sup>132</sup>

**Notice of withdrawal**

**184.** A notice of withdrawal filed under the regulation, section 56(1), 64(1), 65(1), 66(1), 67(2), 68(2) or 69 must be in the approved form.<sup>133</sup>

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

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

**Form of ballot paper for amalgamation if no alternative scheme**

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

**Form of ballot paper for withdrawal from amalgamation**

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

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<sup>132</sup> See also the regulation, section 69 (Application for alternative ballot).

<sup>133</sup> See also the regulation, section 56 (Community of interest declaration for amalgamation), 64 (Application to submit proposed amalgamation to a ballot), 65 (Application to submit proposed withdrawal to a ballot), 66 (Amalgamation ballot exemption—number of members), 67 (Amalgamation ballot exemption—recognising federal ballot), 68 (Withdrawal ballot exemption—recognising federal ballot) or 69 (Application for alternative ballot).

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

**188.** An application for a ballot inquiry for a claimed irregularity in an amalgamation or withdrawal ballot must be in the approved form.<sup>134</sup>

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

**189.** An application under section 639(1) or (4)<sup>135</sup> of the Act for deregistration of an organisation must be in the chapter 12 approved form.

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

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

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

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

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<sup>134</sup> See also the regulation, section 125 (Requirements for application).

<sup>135</sup> Section 639 (Who may bring deregistration proceedings)

## PART 15—INDUSTRIAL AGREEMENTS

### Notice of intention to retire from agreement

**191.** A notice, under section 142 of the 1990 Act,<sup>136</sup> signifying an intention to retire from an industrial agreement must—

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

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

## PART 16—FEES

### Fees in the court, commission or registry

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

### Fees in Industrial Magistrates Court

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

- (a) a complaint, claim under rule 90,<sup>137</sup> summons or other process under the *Justices Act 1886*; or

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<sup>136</sup> Repealed *Industrial Relations Act 1990*, section 142 (Retirement of parties from agreement). For the saving provision see the *Industrial Relations Act 1999*, section 713(2).

<sup>137</sup> Rule 90 (Application of div 1)

- (b) a proceeding for—
  - (i) an offence against the *Pastoral Workers' Accommodation Act 1980*; or
  - (ii) an offence against the *Workers' Accommodation Act 1952*; or
  - (iii) an offence against the *Workplace Health and Safety Act 1995*.

## **PART 17—MISCELLANEOUS**

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

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

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

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

### **Form of notices**

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

(2) Subrule (1), does not prevent the commission giving an attendance notice under section 232(2)<sup>138</sup> of the Act orally.

### **Direction about confidential material tendered in evidence—Act, s 679(5)**

**196.** A copy of a direction under section 679(5)<sup>139</sup> of the Act must be posted in a conspicuous place—

- (a) in the registry; or
- (b) at the court house in the city or town where the court, commission or registrar sat or is sitting.

### **Searching and copying documents**

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

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

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

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

**198.(1)** An application for a permit under section 695<sup>140</sup> of the Act must be in the approved form.

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

(3) A student's work permit must—

- (a) be in the approved form; and
- (b) state any conditions to which the permit is subject.

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<sup>138</sup> Section 232 (Compulsory conference)

<sup>139</sup> Section 679 (Confidential material tendered in evidence)

<sup>140</sup> Section 695 (Student's work permit)

**Aged or infirm person's permit**

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

- (a) an application for a permit under section 696<sup>141</sup> of the Act;
- (b) a notice of hearing of the application;
- (c) an aged or infirm person's permit.

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

**Continuation of proceeding after 6 months delay**

**200.(1)** This rule applies if—

- (a) an application, other than an application under section 74<sup>142</sup> of the Act, has been filed in the court, commission or registry; and
- (b) no action has been taken for 6 months since the last action was taken in the application.

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

**Lapse of proceedings after 1 year's delay**

**201.(1)** This rule applies if—

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

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

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

- (a) be in the approved form; and

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<sup>141</sup> Section 696 (Aged or infirm persons permits)

<sup>142</sup> Section 74 (Application for reinstatement)

- (b) state the steps taken in the proceedings; and
- (c) explain the circumstances of the delay; and
- (d) state the steps (including a timetable) proposed to be taken to progress the proceedings; and
- (e) state any prejudice suffered or likely to be suffered by another party to the proceeding if the proceedings are struck out; and
- (f) state the merits of the proceedings; and
- (g) state why the court, commission or registrar should make the order despite the delay.

(4) The registrar may, require the applicant to show cause by letter to the registrar why the application should not be struck out within 21 days of making the requirement.

(5) The notice must state a warning that if the applicant does not show cause within the time stated in the notice, the court, commission or registrar may strike the application out.

(6) The response must—

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

(7) After considering any response by the applicant, the court, commission or registrar may—

- (a) list the application for hearing, with or without directions; or
- (b) strike out the application.

(8) If the application is struck out, the registrar must—

- (a) give the applicant written notice of that fact; and

- (b) notify the other parties to the proceeding of that fact by industrial gazette notice.

## **PART 18—TRANSITIONAL**

### **Continuance of proceedings and appointments**

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

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

(3) In this rule—

**“appointment”** means an appointment of an agent.

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

	rule 192
	\$
<b>1. Filing—</b>	
(a) application for directions order or another order . . . . .	11.00
(b) application for certificate of registrar . . . . .	11.00
(c) application for an authority . . . . .	11.00
(d) amended application . . . . .	19.50
(e) application, if not otherwise stated . . . . .	34.00
(f) objection to an application . . . . .	7.50
(g) response . . . . .	6.40
(h) request for attendance notice . . . . .	15.00
<b>2. Filing notice of—</b>	
(a) intention to retire from industrial agreement; or	
(b) authorisation of industrial action; or	
(c) termination of a certified agreement or EFA . . . . .	15.00
<b>3. Certified agreement—</b>	
(a) certification or amendment . . . . .	29.50
(b) application for extension or termination . . . . .	15.00
<b>4. EFA—</b>	
(a) amendment . . . . .	29.50
(b) filing notice of intention to retire or withdraw . . . . .	15.00
(c) filing application to withdraw by party affected by industrial action . . . . .	15.00
(d) filing application for amendment or termination by a full bench . . . . .	15.00
<b>5. Industrial organisation—</b>	
(a) application to submit proposed amalgamation to ballot	130.00

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 SCHEDULE 1 (continued)

(b) application for registration as an industrial organisation	130.00
(c) application for approval to amend rules—	
(i) all rules . . . . .	105.00
(ii) some rules . . . . .	52.00
<b>6.</b> Search for, or inspection of, document . . . . .	3.50
<b>7.</b> Photocopying, each page . . . . .	0.30

## SCHEDULE 2

### DICTIONARY

rule 3

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

**“chapter 12 approved form”** means a form approved under section 708<sup>143</sup> of the Act for use for applications under chapter 12<sup>144</sup> of the Act.

**“commission”** includes the full bench.

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

**“filed”** means—

- (a) for a QWA—filed with the registrar or chief inspector; or
- (b) for an application to appeal from a decision of an industrial magistrate—filed under rule 119;<sup>145</sup> or
- (b) otherwise—filed with the registrar.

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

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

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<sup>143</sup> Section 708 (Approved forms)

<sup>144</sup> Chapter 12 (Industrial organisations)

<sup>145</sup> Rule 119 (Filing and service of application to appeal)

## ENDNOTES

1. Made by the Governor in Council on 14 December 2000.
2. Notified in the gazette on 15 December 2000.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Employment, Training and Industrial Relations.