



Queensland

Industrial Relations Legislation Amendment Regulation (No. 1) 2014

Subordinate Legislation 2014 No. 143

made under the

Industrial Relations Act 1999

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Industrial Relations Legislation Amendment Regulation (No. 1) 2014*.

2 Commencement

- (1) Section 7 commences on 29 June 2014.
- (2) The remaining provisions of this regulation commence on 1 July 2014.

Part 2 Amendment of Industrial Relations Regulation 2011

3 Regulation amended

This part amends the *Industrial Relations Regulation 2011*.

4 Amendment of s 25 (Who may object—Act, s 654)

Section 25(5), ‘the commission’—

omit, insert—

the industrial tribunal

5 Insertion of new pt 4A

After section 10H—

insert—

[s 6]

Part 4A High-income senior employees

10I Prescribed classes of high-income positions—Act, s 190(b)(i)

For section 190(b)(i) of the Act, the following classes of positions are prescribed—

- (a) chief executive officers within the meaning of the *Local Government Act 2009*, schedule 4;
- (b) senior executive employees of local governments within the meaning of the *Local Government Act 2009*, section 196(6).

6 Amendment of s 58 (Amalgamation or withdrawal scheme)

(1) Section 58(1)—

insert—

- (ea) if it is proposed to change an existing organisation's list of callings—particulars of the proposed change;

(2) Section 58(1)(ea) to (g)—

renumber as section 58(1)(f) to (h).

7 Amendment of s 146A (Extension of nominal expiry date—Act, s 828)

Section 146A(2)—

insert—

- (d) 1 October 2014 is prescribed for a certified agreement under section 827 of the Act that—

- (i) applies to a local government other than the Brisbane City Council; and
- (ii) becomes a continuing agreement under section 827(2) of the Act during the period starting on 30 June 2014 and ending on 31 August 2014.

8 Amendment of sch 5C (Wage increases—Act, s 830)

Schedule 5C—

insert—

TMR Enterprise Determination 2011	2.2%	1 July 2014	30 June 2015
Transport and Main Roads Operational Employees' Certified Agreement 2011	2.2%	1 July 2014	30 June 2015

9 Amendment of sch 6 (Text of part 14 and schedule 7A of the repealed Industrial Relations Regulation 2000)

Schedule 6, entry for schedule 7A, part 1, after item 7—

insert—

Editor's note—

- 1 Skills Queensland was dissolved on 22 November 2013 and the chief executive (training) became its successor in law: see the *Vocational Education, Training and Employment Act 2000*, sections 412 and 413.
- 2 This note is provided for information purposes only and was not part of schedule 7A of the repealed *Industrial Relations Regulation 2000*.

[s 10]

Part 3

Amendment of Industrial Relations (Tribunals) Rules 2011

10 Rule amended

This part amends the *Industrial Relations (Tribunals) Rules 2011*.

11 Amendment of r 58 (Issue of attendance notices)

Rule 58—

insert—

(1A) A member of the commission or the registrar may refuse a request of a party to issue an attendance notice requiring a person, who is a non-party to the proceeding, to produce a stated document if satisfied—

- (a) the party could require the production of the document under subdivision 7A; and
- (b) the party has not made reasonable attempts, under subdivision 7A, to obtain the document.

12 Insertion of new pt 2, div 2, sdiv 7A

Part 2, division 2—

insert—

Subdivision 7A Notices of non-party production

6A Definitions for sdiv 7A

In this subdivision—

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

industrial tribunal means—

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

non-party see rule 64B(1).

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

objector see rule 64E(3)(c).

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

Note—

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

64B Notice requiring non-party production

- (1) A party to a proceeding may, by notice of non-party production, require a person who is not party to the proceeding (the **non-party**) to produce to the party, within 14 days after service of the notice on the non-party, a document—
 - (a) directly relevant to a matter in issue in the proceeding; and
 - (b) in the possession or under the control of the non-party; and
 - (c) that is a document the non-party could be required to produce at the hearing for the proceeding.

[s 12]

- (2) The party may not require production of a document if there is available to the party another reasonably simple and inexpensive way of proving the matter sought to be proved by the document.
- (3) The non-party must comply with the notice but not before the end of 7 days after service of the notice on the non-party.
- (4) The requirement, under this rule, for a non-party to produce a document is not an ongoing duty.

64C Form and service of notice

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

64D Others affected by notice

- (1) The party must serve a copy of the notice on—
 - (a) a person, other than a party and the non-party, about whom information is sought by the notice; and
 - (b) if the party knows the non-party does not own a document required to be produced—the owner of the document.
- (2) Subrule (1) does not apply if the party's lawyer—
 - (a) believes, on reasonable grounds, that a person who would otherwise be required to

- be served under subrule (1) is likely to fabricate evidence or perpetrate fraud if the person becomes aware of the notice; and
- (b) has completed a certificate in the approved form stating that the lawyer has that belief and that the interests of justice are likely to be jeopardised if the person were served with the notice.
- (3) A certificate by the party's lawyer under subrule (2) must be tendered to the industrial tribunal at the hearing for the proceeding.
 - (4) Further, subrule (1)(b) does not apply if, after reasonable inquiries, the party can not identify the owner of the document.
 - (5) The party must write the name and address of anyone who must be served under this rule on the notice and on all copies of the notice.

64E Objection to production

- (1) The non-party, or a person who has been served with a copy of the notice under rule 64D, may object to the production of some or all of the documents mentioned in the notice within 7 days after its service or, with the leave of the industrial tribunal, a later time.
- (2) Also, another person who would be affected by the notice and who has not been served may object to the production of some or all of the documents mentioned in the notice at any time with the leave of the industrial tribunal.
- (3) The objection must—
 - (a) be written; and
 - (b) be served on the party; and

[s 12]

- (c) if the person objecting (the *objector*) is not the non-party—be served on the non-party; and
 - (d) clearly state the reasons for the objection.
- (4) The reasons may include, but are not limited to, the following—
- (a) if the objector is the non-party—the expense and inconvenience likely to be incurred by the non-party in complying with the notice;
 - (b) the lack of relevance to the proceeding of the documents mentioned in the notice;
 - (c) the lack of particularity with which the documents are described;
 - (d) a claim of privilege;
 - (e) the confidential nature of the documents or their contents;
 - (f) the effect production would have on any person;
 - (g) if the objector was not served with the notice—the fact that the objector should have been served.

64F Objection stays notice

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

64G Industrial tribunal's decision about objection

- (1) Within 7 days after service of an objection under rule 64E, the party may apply to the industrial tribunal for a decision about the objection.
- (2) The industrial tribunal may make any order it considers appropriate including, but not limited to, an order—

- (a) lifting the stay; or
 - (b) varying the notice; or
 - (c) setting aside the notice.
- (3) Unless the industrial tribunal otherwise orders, each party to an application to decide an objection must bear the party's own costs of the application.

64H Production and copying of documents

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

64I Costs of production

- (1) Subject to rule 64G(3), the party must pay the non-party's reasonable expenses of producing a document.
- (2) Within 1 month after producing a document, the non-party must give to the party written notice of the non-party's reasonable expenses of producing it.

[s 13]

- (3) Unless the industrial tribunal otherwise orders, the party may apply to the registrar within 1 month after receiving written notice under subrule (2) for assessment of the expenses.

13 Omission of r 82 (Application for reinstatement of training contract cancelled by coercion—Vocational Education, Training and Employment Act 2000)

Rule 82—

omit.

14 Amendment of r 132 (Application of pt 5)

Rule 132(1)(g)—

omit, insert—

- (g) under the *Further Education and Training Act 2014*, section 168.

15 Amendment of r 133 (Record for particular appeals and WHS reviews)

- (1) Rule 133(2)(b)(iv), (v) and (vii), ‘*Vocational Education, Training and Employment Act 2000*’—

omit, insert—

Further Education and Training Act 2014

- (2) Rule 133(2)(b)(vi), ‘*Vocational Education, Training and Employment Act 2000*, schedule 3’—

omit, insert—

Further Education and Training Act 2014, schedule 2

- (3) Rule 133(2)(b)(viii), ‘*Skills Queensland*’—

omit, insert—

the chief executive (training)

- (4) Rule 133(2)(c)(iii)—

omit.

(5) Rule 133(2)(c)(iv)—

renumber as rule 133(2)(c)(iii).

(6) Rule 133(2)(e)(iii)—

omit, insert—

(iii) the *Further Education and Training Act 2014*;

16 Amendment of r 135 (Service of applications)

Rule 135(4), ‘Skills Queensland’—

omit, insert—

the chief executive (training)

17 Amendment of r 136 (Service of application if respondent is Skills Queensland)

(1) Rule 136, heading, ‘Skills Queensland’—

omit, insert—

the chief executive (training)

(2) Rule 136(1)—

omit, insert—

(1) This rule applies if—

(a) the chief executive (training) is a respondent to an appeal under the *Further Education and Training Act 2014*, section 168; and

(b) the chief executive (training) is served with the application to appeal under rule 135.

(3) Rule 136(2), ‘Skills Queensland’—

omit, insert—

The chief executive (training)

[s 18]

(4) Rule 136(2)(a), '(c)(iii),'—
omit.

18 Omission of r 166 (Application for order applying to vocational placement)

Rule 166—
omit.

19 Omission of r 205 (Application for exemption from accounting or audit provisions)

Rule 205—
omit.

20 Amendment of r 206 (Application for exemption from accounting or audit obligations for an employer organisation that is a corporation)

Rule 206(1), 'divisions 2 to 4'—
omit, insert—
divisions 2 and 3

21 Amendment of pt 19, div 2, hdg (Transitional provisions)

Part 19, division 2, heading, after 'provisions'—
insert—

for the Industrial Relations (Tribunals) Rules 2011

22 Insertion of new pt 19, div 3

After rule 238—
insert—

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

239 Transitional provision

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

23 Amendment of sch 1 (Fees in the court, commission or registry)

Schedule 1, items 1 and 2—

omit, insert—

[s 24]

1	Filing—	
	(a) an application made by an employee, under section 74 of the Act, for reinstatement	51.50
	(b) an application made by a party or inspector, under section 276 of the Act, to amend or declare void a contract or part of a contract	51.50
	(c) an application for directions, as mentioned in section 339 of the Act, relating to an application mentioned in paragraph (a) or (b)	18.10
2	Searching for, or inspecting, a filed document	5.00

24 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *enabling Act*, paragraph (f)—

omit, insert—

- (f) the *Further Education and Training Act 2014*; or

- (2) Schedule 2, definition *stay of a decision under appeal or review*, paragraph (f)—

omit, insert—

- (f) an order that a decision be stayed under the *Further Education and Training Act 2014*, section 169;

- (3) Schedule 2—

insert—

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

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

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

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

objector, for part 2, division 2, subdivision 7A, see rule 64E(3)(c).

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

ENDNOTES

- 1 Made by the Governor in Council on 26 June 2014.
- 2 Notified on the Queensland legislation website on 27 June 2014.
- 3 The administering agency is the Department of Justice and Attorney-General.

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Authorised by the Parliamentary Counsel