

Industrial Relations Commission Amendment Regulations (No. 3) 2022

SL 2022/75

Made by the Chief Commissioner of The Western Australian Industrial Relations Commission.

1. Citation

These regulations are the *Industrial Relations Commission Amendment Regulations (No. 3) 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 20 June 2022.

3. Regulations amended

These regulations amend the *Industrial Relations Commission Regulations 2005*.

4. Regulation 3 amended

In regulation 3 delete the definitions of:

approved form
Form

5. Regulation 5 amended

- (1) In regulation 5(1):

- (a) delete “a Form” and insert:

an approved form

- (b) delete “Form” (2nd occurrence) and insert:

form

- (2) In regulation 5(2A) delete “a Form” and insert:

an approved form

- (3) In regulation 5(6):

- (a) in paragraph (a) delete “to be”;
- (b) in paragraph (b) delete “is to” and insert:

must

- (4) In regulation 5(8) delete “is to” and insert:

must

- (5) In regulation 5(9) delete the passage that begins with “is to —” and ends with “party.” and insert:

may return the document by sending it electronically to the email address of the lodging party.

- (6) Delete regulation 5(10) and (11).

6. Regulation 41 amended

In regulation 41(1) delete “form set out in Schedule 1 Division 1.” and insert:

approved form.

7. Part 5 heading replaced

Delete the heading to Part 5 and insert:

Part 5 — Various applications under Act

8. Regulation 56 replaced

Delete regulation 56 and insert:

56. Retirement from industrial agreement

As soon as practicable after a notice under section 41(7) of the Act signifying a party's intention to retire from an industrial agreement is filed, the Registrar must serve a copy of the notice on each other party to the agreement.

9. Part 6 heading and Part 6 Division 1 heading deleted

Delete the heading to Part 6 and the heading to Part 6 Division 1.

10. Regulations 61 and 62 replaced

Delete regulations 61 and 62 and insert:

60A. Applications for equal remuneration orders

- (1) An application under section 29(1)(b) of the Act for an equal remuneration order must be in the approved form and have attached to it a statement that includes details of the following —
 - (a) the terms of the order sought;
 - (b) the employees to be covered by the order;
 - (c) any industrial instrument that applies to those employees;
 - (d) the nature of the work, skill and responsibility required of those employees;
 - (e) any applications for an alternative remedy that have been made in relation to those employees.
- (2) After an application is filed, the Registrar must seek directions from the Commission as to service of the application.
- (3) The Registrar must serve a copy of the application together with its attachments as directed by the Commission.
- (4) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 14 days after being served with the application.

- (5) A response —
 - (a) must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the application; and
 - (b) may contain a counter-proposal in which case the response must clearly specify in detail what is proposed.
- (6) As soon as practicable after a respondent files a response, the Registrar must serve a copy of the response on each other party.
- (7) If the applicant is served with a response and wants to reply to the response, the applicant must file a reply in writing within 14 days of being served with the response.
- (8) Subregulation (9) applies to a party to an application for an equal remuneration order if the party —
 - (a) was served with a copy of the application or a copy of a response containing a counter-proposal; and
 - (b) did not file a response or a reply, as the case may be, within the times respectively allowed under these regulations.
- (9) At a hearing of the application, the party may be heard with respect to the application or the counter-proposal —
 - (a) only by leave of the Commission; and
 - (b) on the conditions, if any, imposed by the Commission.

61. Unfair dismissal and contractual benefit claims by employees

- (1) The following claims must be referred to the Commission by application in the approved form and have attached to the application the particulars approved by the Chief Commissioner from time to time —
 - (a) a claim by an employee, referred under section 29(1)(c) of the Act, that the employee has been harshly, oppressively or unfairly dismissed from employment;
 - (b) a claim by an employee, referred under section 29(1)(d) of the Act, that an employer has not allowed the employee a benefit, other than a benefit under an award or an order, to which the employee is entitled under the contract of employment.

- (2) If a claim is referred under section 29(1)(c) of the Act after the time prescribed in section 29(2) of the Act, the application must have attached to it a statement from the applicant setting out the facts on which the applicant relies to show why it would be unfair for the Commission not to accept the referral.
- (3) Unless the Commission otherwise directs, the Registrar must, as soon as practicable after an application is filed, serve a copy of the application on each respondent.
- (4) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 21 days after being served with the application.
- (5) A response must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (6) Unless the Commission otherwise directs, the Registrar must, as soon as practicable after a response is filed, serve a copy of the response on the applicant.
- (7) At a hearing by the Commission of an application, a party who was served with a copy of the application and who did not file a response within the time allowed under these regulations may only be heard on the matters raised in the application and not on any other matter.

62. Stop bullying or sexual harassment applications by workers

- (1) A stop bullying or sexual harassment application referred to the Commission by a worker under section 29(1)(e) of the Act must —
 - (a) provide details of the following respondents to the application —
 - (i) the person conducting a business or undertaking for whom the worker carries out work;
 - (ii) each individual alleged to be bullying or sexually harassing the worker at work;
 - (iii) if the behaviour of an individual referred to in subparagraph (ii) occurs in relation to that individual's work — the person conducting a business or undertaking for whom the individual carries out work;

and

- (b) otherwise be in the approved form; and
 - (c) have attached to the application the particulars approved by the Chief Commissioner from time to time.
- (2) Unless the Commission otherwise directs, the Registrar must serve a copy of an application that is filed on —
 - (a) the respondent referred to in subregulation (1)(a)(i) as soon as practicable after the application is filed; and
 - (b) each respondent referred to in subregulation (1)(a)(ii) and (iii) within 1 day after the application is served under paragraph (a).
- (3) A respondent who is served with an application and who wants to respond to the application must file a response in the approved form within 7 days after being served with the application.
- (4) A response must, in summary form, specify the facts on which the respondent relies and specifically admit or dispute, either with or without qualification, each part of the application.
- (5) Unless the Commission otherwise directs, the Registrar must, within 7 days after a respondent files a response, serve a copy of the response on each other party.
- (6) At a hearing by the Commission of a stop bullying or sexual harassment application, a party who was served with a copy of the application and who did not file a response within the time allowed under these regulations may only be heard on the matters raised in the application and not on any other matter.

11. Part 6 Division 2 heading deleted

Delete the heading to Part 6 Division 2.

12. Part 6 heading inserted

Before regulation 63 insert:

Part 6 — Agents

13. Regulation 63 amended

Delete regulation 63(2) and insert:

- (2) An applicant who refers a matter to the Commission under section 29(1)(b), (c), (d) or (e) of the Act may appoint a person as agent by completing the relevant part of the approved form referring the matter to the Commission.

14. Part 6 Division 3 heading deleted

Delete the heading to Part 6 Division 3.

15. Part 6A heading inserted

Before regulation 64 insert:

Part 6A — Delegation to Registrars

16. Regulation 64 amended

- (1) In regulation 64(1) delete “section 29(1)(b)” and insert:

section 29(1)(c) or (d)

- (2) In regulation 64(2):

- (a) in paragraph (a) delete “Registrar or a deputy registrar; and” and insert:

Registrar; and

- (b) in paragraph (b) delete “or a deputy registrar”.

17. Regulation 66 amended

- (1) Delete regulation 66(1).
- (2) Delete regulation 66(2) and insert:

- (2) An application under section 55 of the Act to the Commission in Court Session for registration of an organisation must be lodged in the office of the Registrar with the following attachments —

- (a) a statement as to —
 - (i) the steps taken by the organisation to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act;
- (b) a copy of the resolution of the organisation authorising the application.

(3) In regulation 66(3):

- (a) delete “Any” and insert:

A

- (b) delete “give notice of that” and insert:

lodge an

18. Regulation 67 amended

- (1) Delete regulation 67(1) and (2) and insert:

- (1) An application to register a council or other body as an association under section 67 of the Act must be made to the Commission in Court Session in the approved form.
- (2) The application must be lodged in the office of the Registrar with the following attachments —
 - (a) a list containing the full names of the organisations that are represented on the council or other body;
 - (b) a list containing the full name and address of each person representing those organisations on the council or other body;
 - (c) a list containing the full names and addresses of the officers of the council or other body;
 - (d) a copy of the rules of the council or other body, certified as being correct by the principal executive officer or secretary of the council or other body;

- (e) a statement as to —
 - (i) the steps taken by the council or other body to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section, as applied by section 67(3) of the Act; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act as applied by section 67(3) of the Act;
 - (f) a copy of the resolution authorising the application.
- (2) In regulation 67(3):
- (a) delete “Any” and insert:

A
 - (b) delete “give notice of that” and insert:

lodge an

Note: The heading to amended regulation 67 is to read:

Registration of industrial association

19. Regulation 68 amended

- (1) Delete regulation 68(1) and (2) and insert:
 - (1) An application under section 72(1) of the Act to register a new organisation formed by amalgamating 2 or more organisations must be made to the Commission in Court Session in the approved form.
- (2) Delete regulation 68(3) and insert:
- (3) The application must be lodged in the office of the Registrar with the following attachments —
 - (a) a list containing the full names and addresses of the officers of the proposed new organisation;
 - (b) a copy of the rules of the proposed new organisation certified as being correct by the principal executive officer or secretary of the new organisation;

- (c) a statement as to —
 - (i) the steps taken by the amalgamating organisations to inform members of the matters set out in section 55(4)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section, as applied by section 72(3) of the Act; and
 - (ii) the opportunity afforded to members to make an objection under section 55(4)(b) of the Act as applied by section 72(3) of the Act;
- (d) a copy of the resolution of each amalgamating organisation authorising the application.

(3) In regulation 68(4):

- (a) delete “Any” and insert:

A

- (b) delete “give notice of that” and insert:

lodge an

20. Regulation 69 amended

(1) In regulation 69(1):

- (a) after “respect” insert:

to its name or

- (b) delete “in triplicate to the Full Bench” and insert:

to the Commission in Court Session

(2) In regulation 69(3):

- (a) delete “An application under subregulation (1)” and insert:

The application

- (b) in paragraphs (a) and (b) delete “3 printed or type-written copies” and insert:

a copy

(c) delete paragraph (c) and insert:

(c) a statement as to —

- (i) the steps taken by the organisation or association to inform members of the matters set out in section 62(3)(b) of the Act, and a copy of any notice or other document given to members for the purposes of that section; and
- (ii) the opportunity afforded to members to make an objection under section 62(3)(b) of the Act;

(d) in paragraph (d) delete “3 copies” and insert:

a copy

(3) Delete regulation 69(4).

(4) In regulation 69(5):

(a) delete “Any” and insert:

A

(b) delete “give notice of that” and insert:

lodge an

21. Regulation 70 amended

(1) In regulation 70(1):

(a) delete “Any” and insert:

An

(b) delete “in triplicate to the Full Bench” and insert:

to the Commission in Court Session

(2) In regulation 70(2):

(a) delete “Any” and insert:

An

(b) delete “to” (2nd occurrence).

- (3) In regulation 70(3):
- (a) delete the passage that begins with “if the” and ends with “type-written” (2nd occurrence) and insert:

the application must have attached to it a

- (b) delete “president” and insert:

principal executive officer

22. Regulation 71 amended

- (1) In regulation 71(1):
- (a) delete “Any” and insert:

An

- (b) delete “in triplicate to the Full Bench” and insert:

to the Commission in Court Session

- (2) In regulation 71(2):
- (a) delete paragraph (a) and insert:

- (a) a statement as to the steps taken by the organisation or association, and a copy of any notice or other document given to members, to inform them —

- (i) about the proposal for the change of name and the reasons for the change of name; and
 - (ii) about the proposed new name; and
 - (iii) that the members or any of them may object to the making of the application by forwarding a written objection to the Registrar;
- (aa) a statement as to the opportunity afforded to members to object to the making of the application;

- (b) in paragraphs (b) and (c) delete “3 copies” and insert:

a copy

- (3) In regulation 71(3):
- (a) delete “Any” and insert:

A

- (b) delete “must give notice of that” and insert:

or association must lodge an

23. Regulations 72 and 73 replaced

Delete regulations 72 and 73 and insert:

72. Counterpart certificates

- (1) An application to the Commission in Court Session for a declaration under section 52A(7) of the Act must be made in the approved form.
- (2) If the application is for a declaration that, for the purposes of section 52A(2) of the Act, a Western Australian branch of a federal organisation is a counterpart federal body in relation to a State organisation, the application must be lodged in the office of the Registrar with the following attachments —
 - (a) a copy of the rules of the State organisation and the rules of the branch;
 - (b) a statement comparing the rules relating to the qualifications of persons for membership of the State organisation and for membership of the branch;
 - (c) a statement comparing the offices that exist within the State organisation and the offices that exist within the branch;
 - (d) a statement indicating the number of persons currently members of the State organisation and the number of persons currently members of the branch;
 - (e) a statement indicating the number and classes of persons affected by section 71(3)(a) and (b) of the Act.
- (3) If the application is for a declaration that, for the purposes of section 52A(3) of the Act, a federal organisation is a counterpart federal body in relation to a State organisation, the application must be lodged in the office of the Registrar with the following attachments —

- (a) a copy of the rules of the State organisation and the rules of the federal organisation;
- (b) either —
 - (i) if there is an agreement referred to in section 52A(4)(b) of the Act between the State organisation and the federal organisation — a copy of the agreement; or
 - (ii) otherwise — a statement comparing the State organisation and the federal organisation by reference to a matter referred to in section 52A(4)(a)(i) to (iv) of the Act;
- (c) a statement indicating the number of persons currently members of the State organisation and the number of persons currently members of the federal organisation;
- (d) a statement indicating the number and classes of persons affected by section 52A(5) and (6) of the Act.

73. Order as to whom employee organisation represents

- (1) An application (a *section 72A application*) to the Commission in Court Session for an order under section 72A(2) of the Act must —
 - (a) be made in the approved form; and
 - (b) set out in detail the grounds of the application.
- (2) A person who wants to be heard in relation to a section 72A application must —
 - (a) lodge an application in the approved form at least 10 days before the hearing of the section 72A application; and
 - (b) set out in detail in the application the grounds on which the person claims sufficient interest to be heard in relation to the section 72A application.
- (3) After an application under subregulation (2) is lodged, the Registrar must, at least 7 days before the hearing of the section 72A application, serve a copy of the application on each party to the section 72A application.

24. Regulation 74 amended

- (1) In regulation 74(1) delete “Any request for a direction” and insert:

A request for the Commission to direct the Registrar to issue a summons

- (2) In regulation 74(4):

- (a) delete “is to” and insert:

must

- (b) after “organisation” insert:

or association

- (3) In regulation 74(5):

- (a) delete “Full Bench” (each occurrence) and insert:

Commission in Court Session

- (b) delete “is to” and insert:

must

- (4) Delete regulation 74(6).

Note: The heading to amended regulation 74 is to read:

Summons for cancellation or suspension of registration of organisation or association

25. Regulation 76 amended

- (1) Delete regulation 76(1) and (2) and insert:

- (1) An application by the Registrar under section 73(12) of the Act to the Commission in Court Session to cancel the registration of an organisation or association must be in the approved form.

- (2) The application must —

- (a) state clearly the grounds on which it is made; and

- (b) have attached to it a statutory declaration setting out the facts on which the Registrar relies.

- (2) In regulation 76(3) delete “is to” and insert:

must

- (3) In regulation 76(4):

- (a) delete “Where” and insert:

If

- (b) delete “give notice of that objection in an” and insert:

lodge an objection in the

- (4) In regulation 76(5) delete “Where” and insert:

If

- (5) In regulation 76(6) delete “is to” (each occurrence) and insert:

must

26. Regulation 77 amended

- (1) In regulation 77(1):

- (a) delete “Where” and insert:

If

- (b) delete “Full Bench” and insert:

Commission in Court Session

- (c) delete “is to” and insert:

must

- (d) delete “form set out in Schedule 1 Division 4.” and insert:

approved form.

(2) In regulation 77(2):

(a) delete “Where” and insert:

If

(b) delete “Full Bench” and insert:

Commission in Court Session

(c) delete “is to” and insert:

must

(d) delete “form set out in Schedule 1 Division 4.” and insert:

approved form.

(3) In regulation 77(3):

(a) delete “Where” and insert:

If

(b) delete “Full Bench” and insert:

Commission in Court Session

(c) delete “is to” and insert:

must

(d) delete “form set out in Schedule 1 Division 4.” and insert:

approved form.

(4) In regulation 77(4):

(a) delete “When” and insert:

If

(b) delete “is to” and insert:

must

(c) after “organisation” (2nd occurrence) insert:

or association

(d) delete “form set out in Schedule 1 Division 4.” and insert:

approved form.

(5) In regulation 77(5):

(a) delete “When” and insert:

If

(b) delete “is to” and insert:

must

(c) delete “form set out in Schedule 1 Division 4.” and insert:

approved form.

27. Regulation 94N deleted

Delete regulation 94N.

28. Regulation 99 deleted

Delete regulation 99.

29. Regulation 99E deleted

Delete regulation 99E.

30. Schedule 1 deleted

Delete Schedule 1.

S. KENNER, Chief Commissioner
The Western Australian Industrial Relations Commission
