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CCMA	Presentation outline	-	
1. Backg	ground		
2. Ge	neral updates to the Rules an	d Forms	
3. Ov	erview of key amendments to	o the Rules	
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#### Background



- Section 115 (2) (cA)(iii) and (2A) CCMA may make Rules to regulate practice and procedure in resolving disputes through conciliation and arbitration.
- Section 115(1)(e) of the LRA CCMA required to review Rules.
- Establishment of a CCMA Task Team amendments to the Rules and Referral Forms.
- GB Rules sub-committee established.
- Consultation with stakeholders.
- GB approved the amendments to the Rules and Forms on 29 November 2022.

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# General updates to the Rules and Referral Forms



- Updates to place names (Grahamstown to Makhanda; Port Elizabeth to Gqeberha; Nelspruit to Mbombela; Witbank to eMalahleni, etc.).
- □ Updated Department of Labour to Dept of Employment and Labour.
- Insertion of the official CCMA electronic referral online portals in Schedule One of the Rules.
- Updated e-mail and physical addresses and corrected typographical errors (Rules and Forms).
- Removed reference to fax numbers (the CCMA is discontinuing its usage of fax facilities).
- Inserted POPIA disclaimers, where required, in the Referral Forms, and POPIA definitions in the Rules.

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#### Rule 1: How to contact the Commission



The CCMA will no longer be accepting faxed referral forms and documents.

Rule 1 limited to setting out how to contact the Commission.



2023



New Rule 1A: Compliance with legislation regarding personal information



Parties to take precautions when sharing personal information (POPIA)

<u>1A</u>	Compliance with legislation regarding personal information
	When a party serves or files documents on the Commission or on the other party in terms of these Rules, or processes documents that contain personal information with the other party, such party must;
	<ul> <li>a) be responsible for complying with their respective obligations under applicable Data Protection Legislation, including, but not limited to the Protection of Personal Information Act 4 of 2013 (POPIA), when processing personal information,</li> </ul>
	b) take appropriate technical and organisational measures and implement security safeguards to prevent the unauthorised or unlawful processing of personal information and/ data of the other party or of another data subject.
	c) process the other party's personal information and/or data only in accordance with that party's instructions (having regard to the Data Protection Legislation), or as feasined by law, and not disclose the other party's personal information and/or data except in accordance with that party's instructions or as required by law
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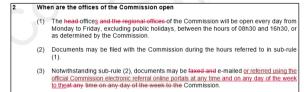
#### Rule: 2 When are the offices of the Commission open



Sets out when offices are physically open and how referrals and documents may be filed after working hours.

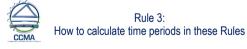
Use of electronic referral online portals - broadens access to the CCMA.

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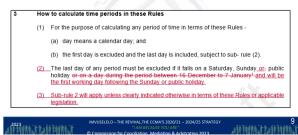
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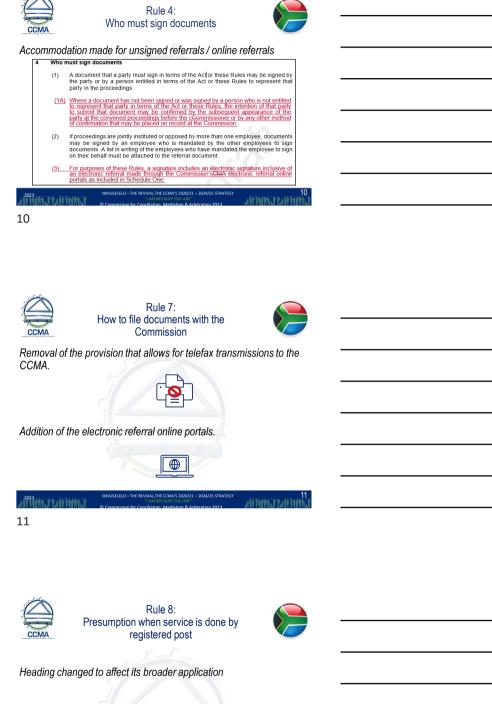
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# The period from 16 December to 7 January will no longer be excluded when calculating time periods for purposes of the Rules.





Documents and notices sent Presumption when service was done by registered post Any document or notice sent by registered post by a partyparty, or the Commission is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was posted.

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#### Rule 9: How to seek condonation for referral documents or applications delivered late



The Rule applies to referrals and applications and is not limited to the LRA. Not peremptory for condonation to be applied for at referral stage

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9	How to seek con latedocuments d	ndonation for <u>referral documents and applications de</u> <del>delivered late</del>	livered
		applies to any referral document or application delivities the period prescribed in the Act, employment law or the	
		ust apply for condonation; in terms of Rule 31,, when d tion to the Commission.	elivering the referral
		ion may also be applied for using the official Commission tals as included in Schedule One.	n electronic referral
		ation for condonation must set out the grounds for seek de details of the following:	ing condonation and
	(a) the d	degree of lateness;	
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Rule 10: How to refer a dispute to the Commission for conciliation



Provision for online referrals and discretion to schedule an in limine if condonation required, but not attached to the referral.



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Rule 12 Commission may attempt to resolve dispute before conciliation



The heading was amended to provide for "attempt" to align it with the LRA. Addition of "commissioner" in heading – aligned to the wording of the Rule.



2023



#### Rule 13: What happens if a party fails to attend at conciliation



	()	
	(b)	adjourn the conciliation to a later date within the 30-day period; or
		conclude the proceedings by issuing a certificate that the dispute remains unresolved.
	established	that a dispute relates to section 64 of the Act, picketing rules must be before a certificate of non-resolution is issued, unless a party provides a ting rules agreement as required by section 69(6A) of the Act.

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Rule 18: How to refer a request for arbitration to the Commission



As per Rule 13, the CCMA may schedule an in limine hearing if condonation is required and not yet applied for.

	LRA form 7.13, which may include the request using the official Commission electronic, referral online portals.
	(2) When referring a request by means other than the official Commission electronic referral online portals as set out in Schedule One, the requesting party must.
	<ul> <li>(a) attach to the request, written proof, in accordance with Rule 6, that the request we served on the other parties to the dispute.</li> </ul>
	(b), attach to the request, an application for condonation if the request for arbitration is made after the relevant time limit has expired.
	(3) Despite Rule 18(2)(b) where a request has been made out of time and if condonation ha not been attached to the request, the Commission will decide whether the condonation v be determined at a hearing or by written submissions received from the parties.
	(4) This Rule does not apply to con-arb proceedings held in terms of section 191(5A) read together with grule 17.
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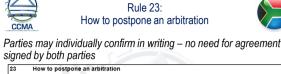


#### Rule 20: When the parties must hold a pre-arbitration conference



Provision made for PSCs, RSCs, SCs or presiding comm to direct the holding of a pre-arb conference.





23	Ho	w to postpone an arbitration	
	(1)	Subject to sub-rule (2) - (6), aAn arbitration may be postponed -	
		(a) If the Commission is satisfied that there is written confirmation to postpone by both partiesby written agreement between the parties; or	
		(b) by application to the Commission and on notice to the other parties in terms of sub- rule (3).	
	(2)	The Commission $\underline{may}_{\text{rmust}}$ postpone an arbitration without the parties appearing if -	
		(a) all the parties to the dispute <u>confirmagree</u> in writing <u>that they agree to the</u> <u>postponement</u> to the postponement; and	
		(b) the written <u>confirmationagreement</u> for the postponement is received by the Commission at least seven (7) days prior to the scheduled date of the arbitration.	_
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Rule 23: How to postpone an arbitration



This is to re-emphasise that the amendments to Rule 23(2) <u>removes</u> the automatic right to postponement that arose when parties agreed in writing to postpone seven days prior to the hearing.



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Rule 23: How to postpone an arbitration (cont'd)



Flexibility provided on how to determine a postponement application. Confirmation of postponement required from CCMA or commissioner.





#### Rule 24: Where a hearing will take place



Rule 24 amended to include different types of hearings.

Online hearings included under "venues" – consent no longer required, although fairness and accessibility remain NB.

24 Where a hearingconciliation or arbitration will take place

- (1) A dispute must be <u>heardconciliated or arbitrated</u> in the region in which the cause of action arose or the employer's principalle place of business is located, unless a <u>Seenior</u> <u>Ceommissioner</u> in the head office of the Commission directs otherwise.
- (2) The Commission or commissioner within a region determines the venue for the hearing, which venue may include an online hearing held via a digital platform—conciliation or arbitration proceedings.

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Rule 29: Disclosure of documents or material relevant to the dispute



Request for disclosure for documents or other material. Application proceedings now allowed. Rule to be distinguished from s16 of the LRA.

29	Dis	closure of documents or material related to the dispute
	(1)	All any time-plane the request for arbitration, but not less than burriers (14) days prior to be heating-all-celler party-mays request the other apply to adsolve any decuments or material relevant to the depute. At any time after the cettificate of outcome isseen sized of the expiry of the 3-day conciliation pretod, but not easts than further not (14) days prior to the heating date, either party may, on application, request the other party to disclose any documents or material relevant to despute.
	(2)	Subject to Rule 31(5)(a). The party to whom the request is made must respond to the request within five (5) days from the date on which the request was received. The party musting the application may deliver a replying written statement or affidiati within there (3) days from the day on which any answering written statement or affidiati within there (3) the second statement of the second statement or affidiative the second statement of a second statement of the second statement
	(3)	A commissioner may either before or during the proceedings at the commissioner's own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.
	(4)	Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.
	(4)(5	b) This Rule is to be distinguished from disclosure of information disputes in terms of section 16 of the Act.

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Rule 30: What happens if a party fails to attend arbitration proceedings before the Commission



Rule aligned to the Solomons/Food Lovers Market judgment per application of S138(5)(a) of the LRA. Rule 30(1)(b): replace "may remove the matter from the roll" with "may dismiss the matter" LAC in Mohube v CCMA & others (discussed below)







#### Rule 30: What happens if a party fails to attend arbitration proceedings before the Commission (cont'd)



Removal of sub-rule (3) which referred to the dismissal of the matter Rule 31(3) reinstated in terms of the LAC Mohube judgment (see next slide for discussion on LAC judgment).

	(b)(c) had not referred the matter to the Commission, the commissioner may -	
	<ul> <li>continue with the proceedings in the absence of that party or</li> </ul>	
	(ii) adjourn the proceedings to a later date.	
(2)	A commissioner must be satisfied that the party had been properly notified of the date, time, and venue of the proceedings, before making any decision in terms of sub-rule (1).	
(3)—	If a matter is dismissed, the Commission-must send a copy of the ruling to the parties within 14 days. (3) Applies again.	

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#### Rule 30: What happens if a party fails to attend arbitration proceedings before the Commission (cont'd)



In the Labour Appeal Court (LAC) judgment of Mohube v CCMA Others (JA18/2022), delivered on 18 May 2023, the LAC rejected the interpretation of section 138(5)(a) per Solomons v Food Lovers Market, Kempton Park. In particular, the LAC held as follows:

- [47] "To interpret the word 'dismissal' in section 138(5)(a) to mean 'struck off the roll' is to give it a meaning that cannot ordinarily by ascribed to the word..."
- [48] The interpretation of "dismissal" is settled and cannot be interpreted in any other way than what was intended by the legislature.
- [50] Where a matter is dismissed in terms of section 138(5)(a) of the LRA, a party may apply for rescission in terms of section 144 of the LRA.

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#### Rule 30: What happens if a party fails to attend arbitration proceedings before the Commission (cont'd)



CCMA Directive on section 138(5)(a) of the LRA read with CCMA Rule 30 on the power of a commissioner to dismiss a matter for non-attendance at arbitration

Directive arising from the Mohube v CCMA & others judgment

- Commissioners have the power to dismiss matters in terms of section 138(5)(a) of the LRA. However, as per the LAC, commissioners are directed to utilise this power as a last resort.
- In cases where a dismissal has been ruled, parties have a right to apply to have the ruling rescinded in terms of section 144 of the LRA read with CCMA Rule 32.
- 3. A ruling issued in terms of Rule 30 is a ruling contemplated in terms of section 144 of the LRA.

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### Rule 31: How to bring an application



Allows for applications to be made in terms of Rule 31 that are not listed in the Rule (e.g. LRA s142A and s143 applications) and added: disclosure of documents to align it to the amendments to Rule 29.

31	How	to bring	an application
	(1)	This F	Rule applies to any application, including but not limited to -
		(a)	application for condonation, joinder, substitution, variation, rescission, postponement and disclosure of documents;
		(b)	application in a jurisdictional dispute; and
		(c)	other preliminary or interlocutory application.

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Rule 31: How to bring an application (cont'd)



Parties have option of submitting a written statement or an affidavit. This provision is repeated throughout Rule 31.



- (a) the title of the matter;(b) the case number assigned to the matter by the Commission, if available;
- (c) the relief sought;
- (d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;
- that any party that intends to oppose the matter must deliver a notice of opposition and answering <u>written statement or</u> affidavit/within five (5) days after the application has been delivered to it;

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#### Rule 31: How to bring an application (cont'd)



Specific provision made for determining matters on the papers.





Rule 31 B: How to apply for enforcement of written undertakings or compliance orders



Rule 31B (1) – (8): addition of an option that allows a party to make an application by way of a written statement.



31



New Rule 31C: Request to have a matter re-enrolled



New Rule – alignment to the Solomons/Food Lovers Market judgment Rule 31C no longer applies based on the LAC finding in Mohube v CCMA and Others

A decision to remove the matter from the roll must be sent to the parties within fourteen (14) days of the date of the bearing.
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New Rule 31C: Request to have a matter re-enrolled (cont'd)



Request for Re-enrolment must be submitted within 14-days of referring party becoming aware that the matter was removed from the roll. Request must be served on the other party – right to oppose within **SEVEN** days. Rule 31C no longer applies

	matter should be re-enrolled, based on the submissions received from the parties.			
(4)	The commissioner considering days from receipt of the answer th- days and the Commission must			
(5)	If a situation for which these Rules do not provide arises in proceedings or contemplated proceedings, the commissioner or the Commission may adopt any procedure that commissioner or Commission deems appropriate in the circumstances.			



Rule 32: How to apply to vary or rescind arbitration awards or rulings



Confirmation that rescission does not apply when a matter is removed from the roll. Sub-rule (2) no longer applies – see Mohube v CCMA and Others



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Rule 34: How to request an inquiry in terms of section 188A



Bank guaranteed cheques not permitted for payment to the CCMA.

34 How to request an inquiry in terms of section 188A of the Act

 An employer requesting the Commission to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Commission.

- (2) The employee must sign the LRA Form 7.19 unless the employee has agreed in terms of section 188A(4)(b) to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the contract or the collective agreement must be attached to the Form.
- (3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Commission. Payment of the fee may only be made by <u>electronic transfer into the bank</u> account of the Commission.

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(a) bank guaranteed cheque; of

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#### Rule 34: How to request an inquiry in terms of section 188A (cont'd)



New sub-rules (7)-(9). Rule aligned to s188A(11) – circumstances where an employee may request s188A Inquiry.

NB: Employer required to pay, even if the request is made in terms of s188A of the LRA.

- Only an employee whose earnings exceed the amount determined by the Minister in terms of section 6(3) of the BCEA may consent to an inquiry in a contract of employment.
   An employee who, in terms of section 188A(11) of the Act, requests that an inquiry be conducted into allegations by the employer, into the conduct or capacity of that employee, must do so by delivering a completed LRA Form 7.19 to the Commission.
   Where an employee, in terms of sub-rule 8, has requested an Inquiry by Arbitrator, the
- (9) Where an employee, in terms of sub-rule 8, has requested an Inquiry by Arbitrator, the employer must pay the prescribed fee to the Commission as set out in sub-rule 3.

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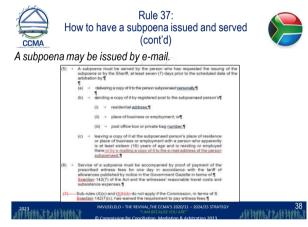
### Rule 37: How to have a subpoena issued and served



New sub-rule 1A enhances CCMA or the commissioner's ability to determine the request for a subpoena.

<ul> <li>(1A) The Commission or commissioner, in determining the request for subpoena, may require that</li></ul>	(1)_Any park who requires the Commission or a commissioner to subpoena a person in terms of Section 142(1) of the Act, must like a completed LAF Arom 7.16 to dependent with a written motivation setting out why the evidence of the person to be subpoenad is necessary. A request for a subpoena does not apply to documents and material relevant to the dispute. Requests for documents and material must be made in terms of Rule 29.
days of receipt of this request and in a manner as set out in the request, and (ii) that the other party provides a written response to the request for subpoena within five (c) days of receipt of this request or provides such a response in a manner as set out	
(5) days of receipt of this request or provides such a response in a manner as set out	
	(5) days of receipt of this request or provides such a response in a manner as set our

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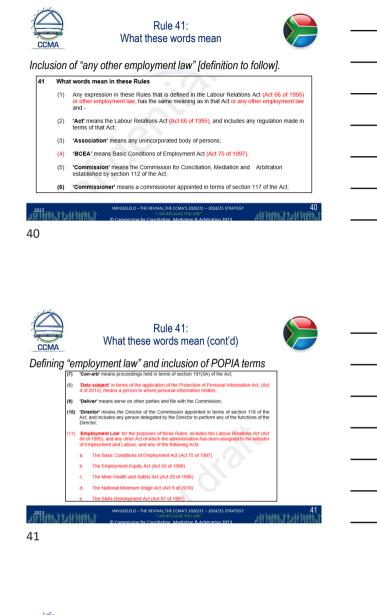


Rule 40A: Payment of an arbitration fee ordered in terms of section 140 of the Act



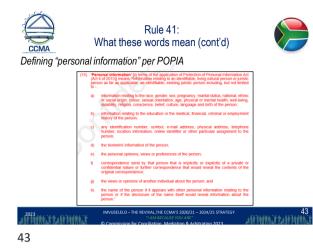
Error corrected – s140(2) of the LRA applies and not s140(1). Removal of payment by cheque. EFT only – CCMA must submit an invoice for such payment.

40A Payment of an arbitration fee ordered in terms of section 140 of the Act
 (1) Where the commissioner, having found that the dismissal was procedurally unfair, orders payment of an Arbitration fee in terms of section 140(24) of the Act;
 (a) Frie arbitration fee shall be the fee set out in the Commission's Tariff of Fees, as Gaazette annually;
 (b) Frie amployer must pay the prescribed fee to the Commission within 14 (fourteen) days of receipt of the award ordering payment of such a fee with the related invoce...
 (c) payment of the fee may only be made by electronic transfer into the bank account of the Commission...





(14) 'Party' means any party to proceedings before the Commission;



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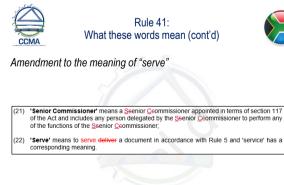
#### Rule 41: What these words mean (cont'd)



Defining "processing of information" per POPIA and reflecting changes to CCMA Senior Commissioner positions



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## Schedule One



- Removed fax numbers for CCMA offices and the e-mail address for the National Office (disputes and documents not to be delivered to the NO e-m address).
- □ Effected place name changes, formatted, and updated contact details.
- □ Added the CCMA online e-referral platform contact details:

	CCMA ONLINE E-REFERRAL PLATFORMS	
	(1) #CCMAConnect	
	(2) https://cmsonline.ccma.org.za	
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Referral Forms - general updates



- Updates in line with POPIA requirements.
- Updates to contact details and typographical errors.
- Aligned Forms to corresponding sections and subsections of legislation.

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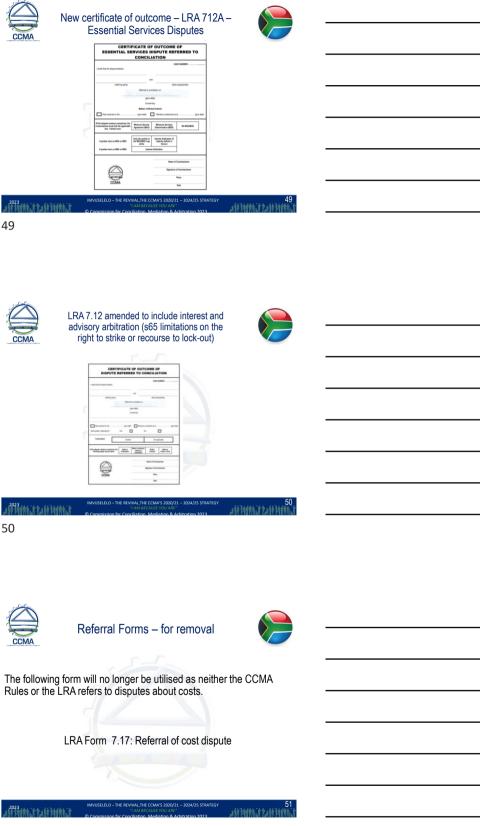
Referral forms



Two new referral forms - Essential Services

LRA Form	Title	Purpose
4.8 B	Request for the determination of minimum numbers to be maintained during strike action	Aligned to section 72(2) of the LRA.
4.8 C	Application to vary or revoke a minimum service agreement	Aligned to section 72(4) of the LRA

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Enforcement referral forms – LRA 7.18 and 7.18A



Application to certify CCMA Award (LRA 7.18) and Bargaining Council award (LRA 7.18A) - referral forms amended to include the requirement that these forms be served on the other party.

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Thank you



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