



# AMENDMENTS TO THE CCMA RULES AND REFERRAL FORMS



2023



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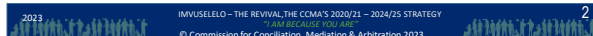


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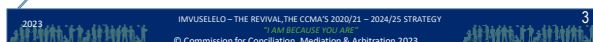
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## Presentation outline



- 1. Background
- 2. General updates to the Rules and Forms
- 3. Overview of key amendments to the Rules
- 4. Overview of key amendments to the Forms



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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 eMalaheni, 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.*

1	<p><b>How to contact the Commission</b></p> <p>(1) The addresses, telephone <del>numbers</del>, <del>telefax numbers</del> and e-mail addresses of the offices of the Commission are listed in Schedule One to these Rules.</p> <p><del>(2) Documents may only be filed with the Commission at the addresses, telefax numbers and e-mail addresses listed in Schedule One.</del></p>
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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 preemptory for condonation to be applied for at referral stage.

9 **How to seek condonation for referral documents and applications delivered late documents delivered late**

(1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act, employment law or these Rules.

(2) A party must apply for condonation, in terms of Rule 31, when delivering the referral or application to the Commission.

(2A) Condonation may also be applied for using the official Commission electronic referral online portals as included in Schedule One.

(3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:

(a) the 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.

10 **How to refer a dispute to the Commission for conciliation**

(1) A party must refer a dispute to the Commission for conciliation by delivering a completed prescribed LRA Form 7.11, which may include the Commission referral electronic referral online portals, (the referral document).

(2) When referring a dispute by means other than the official CCMA electronic referral online portals as set out in Schedule One, the referring party -

(a) must attach to the referral document, written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute.

(b) must attach to the referral document, an application for condonation if the referral is referred after the relevant time limit has expired.

(3) Despite Rule 10(2)(b) where a referral has been referred out of time and if condonation has not been attached to the referral, the Commission will decide whether the condonation will be determined at a hearing or by written submissions received from the parties.

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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.

12 **Commission or a commissioner may attempt to seek to resolve a dispute before conciliation**

The Commission or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to attempt to resolve the dispute.

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### 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 hearing conciliation or arbitration will take place**

(1) A dispute must be ~~heard~~heard, conciliated or arbitrated in the region in which the cause of action arose or the employer's principal place of business is located, unless a ~~Senior~~Senior Commissioner in the head office of the Commission directs otherwise.

(2) The Commission ~~or commissioner~~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.~~the hearing.

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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 Disclosure of documents or material related to the dispute**

(1) ~~At any time after the request for arbitration, but not less than fourteen (14) days prior to the hearing date, either party may request the other party to disclose any documents or material relevant to the dispute. At any time after the certificate of outcome (cease) issued or the expiry of the 90-day conciliation period, but not less than fourteen (14) days prior to the hearing date, either party may, on application, request the other party to disclose any documents or material relevant to the dispute.~~

(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 initiating the application may deliver a replying written statement or affidavit within three (3) days from the day on which any answering written statement or affidavit was served on it.~~

(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) ~~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)

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

(1) If a party to the dispute fails to attend or be represented at any arbitration proceedings before the Commission, and that party-

(a) ~~had referred the dispute to the Commission, a commissioner may dismiss the matter by issuing a written ruling was the referring party, the commissioner appointed to arbitrate, must attempt to establish the reason for non-attendance. If there appears to be a good reason for the absence, the commissioner must direct that the matter be rescheduled for arbitration; or~~

(b) ~~if the absence of the party referred to in (a) is, on the face of it, willful, unexplained, or the commissioner does not accept the explanation, the commissioner may dismiss the matter.~~

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### 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.



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### 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*

**31C Request to have a matter re-enrolled**  
(1) A decision to remove the matter from the roll must be sent to the parties within fourteen (14) days of the date of the hearing.  
(2) If the referring party who wishes to have the arbitration hearing wishes to have the matter re-enrolled that party must submit the Request for Re-enrolment to the Commission within fourteen (14) days of the referring party becoming aware that the matter was removed from the roll. The Request for Re-enrolment form must be served on the other party. Upon receipt of the Request for Re-enrolment, the other party has seven (7) days from date of receipt to file opposing papers.

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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*

(3) The commissioner considering the Request for Re-enrolment may decide whether the matter should be re-enrolled, based on the submissions received from the parties.  
(4) The commissioner considering the Request for Re-enrolment must make a decision within fourteen (14) days from receipt of the answer from the other party or upon expiry of the seven (7) days and the Commission must serve the decision.  
(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.

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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*

**32 How to apply to vary or rescind arbitration awards or rulings**

(1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

~~(+)(2) This Rule does not apply to a decision taken by the Commission or commissioner to remove a matter from the roll in terms of Rule 30.~~

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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 sSection 188A of the Act**

(1) 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 electronic transfer into the bank account of the Commission.

~~(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.

(7) 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.

(8) 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.

(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.

**37 How to have a subpoena issued and served to secure the presence of a person**

(1) Any party who requires the Commission or a commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed 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.

(1A) The Commission or commissioner, in determining the request for subpoena, may require that -

(i) the party who requests the subpoena provide additional information within three (3) 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 (5) days of receipt of this request or provides such a response in a manner as set out in the request.

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Rule 37:  
How to have a subpoena issued and served  
(cont'd)



A subpoena may be issued by e-mail.

(5) A subpoena must be served by the person who has requested the issuing of the subpoena or by the Sheriff, at least seven (7) days prior to the scheduled date of the arbitration by -

(a) delivering a copy of it to the person subpoenaed personally;

(b) sending a copy of it by registered post to the subpoenaed person's -

(i) residential address;

(ii) place of business or employment; or

(iii) post office box or private bag number;

(c) leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there or by e-mailing a copy of it to the e-mail address of the person subpoenaed;

(6) Service of a subpoena must be accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.

(7) Sub-rules (4)(c) and (6)(b) do not apply if the Commission, in terms of section 142(7)(c), has waived the requirement to pay witness fees.

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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(2) of the Act:-

(a) If the arbitration fee shall be the fee set out in the Commission's Tariff of Fees, as gazetted annually;

(b) If the employer 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 invoice;

(c) payment of the fee may only be made by electronic transfer into the bank account of the Commission.

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Rule 41:  
What these words mean



Inclusion of "any other employment law" [definition to follow].

- 41 What words mean in these Rules**
- (1) Any expression in these Rules that is defined in the Labour Relations Act (Act 66 of 1995) or other employment law, has the same meaning as in that Act or any other employment law and -
  - (2) 'Act' means the Labour Relations Act (Act 66 of 1995), and includes any regulation made in terms of that Act;
  - (3) 'Association' means any unincorporated body of persons;
  - (4) 'BCEA' means Basic Conditions of Employment Act (Act 75 of 1997);
  - (5) 'Commission' means the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Act;
  - (6) 'Commissioner' means a commissioner appointed in terms of section 117 of the Act.

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



Defining "employment law" and inclusion of POPIA terms

- (7) 'Con-arb' means proceedings held in terms of section 191(5A) of the Act.
- (8) 'Data subject' in terms of the application of the Protection of Personal Information Act, (Act 4 of 2013), means a person to whom personal information relates;
- (9) 'Deliver' means serve on other parties and file with the Commission;
- (10) 'Director' means the Director of the Commission appointed in terms of section 118 of the Act, and includes any person delegated by the Director to perform any of the functions of the Director;
- (11) 'Employment Law' for the purposes of these Rules, includes the Labour Relations Act (Act 66 of 1995), and any other Act of which the administration has been assigned to the Minister of Employment and Labour, and any of the following Acts:
  - a. The Basic Conditions of Employment Act (Act 75 of 1997)
  - b. The Employment Equity Act (Act 55 of 1998)
  - c. The Mine Health and Safety Act (Act 29 of 1996)
  - d. The National Minimum Wage Act (Act 9 of 2018)
  - e. The Skills Development Act (Act 97 of 1997)

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



Amendment to meaning of "to file"

- (12) 'File' means ~~to lodge~~ the delivery of a document with the Commission in terms of Rule 7;
- (13) 'Labour Court' means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;
- (14) 'Party' means any party to proceedings before the Commission;

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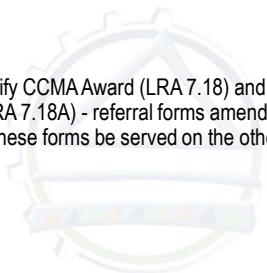




### Enforcement referral forms – LRA 7.18 and 7.18A



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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### Q and A



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### Thank you



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dankie/ ke a leboga! ENKOSI!  
inkomu! thank you! udo livhuwa!  
ke a leboga! ngiyabonga!  
siyabonga!



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