

**1996—No. 281**

**COMPENSATION COURT ACT 1984—RULE**

NEW SOUTH WALES



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1. This rule was made by the Rule Committee on 3rd June 1996.
2. The Compensation Court Rules 1990 are mended as follows:
  - (a) Part 1 rule 4  
Omit the rule.
  - (b) Part 1 rule 6
    - (i) In subrule (1) omit “subrule (2)”, insert instead “subrules (2) and (2A)”;
      - (ii) After subrule (2) insert:

(2A) A Practice Note issued by the Chief Judge for the speedy determination of the real questions between the parties to proceedings in general or to specific proceedings or classes of proceedings:

        - (a) shall be taken to be a direction given by the Court under subrule (2); and
        - (b) shall, to the extent of any inconsistency between a provision of the Practice Note and a provision of the rules, prevail over the rules.
    - (c) Part 9 rule 6 (4)  
Omit “specified in the listing notice”.
    - (d) Part 10 rule 4  
After Part 10 rule 3 insert:
      4. (l) Where in respect of any proceedings on a claim for compensation:
        - (a) a respondent has not filed a notice of appearance or answer; and
        - (b) the applicant has not filed an affidavit of service of the originating process on that respondent,

within 6 months after the date of commencement of the proceedings, the proceedings as against that respondent are deemed to have been struck out, and no further step may be taken in those proceedings (other than an application mentioned in subrule (2)) until the proceedings have been restored to the list.

(2) The Court may, on application by a party and on terms, restore to the list any proceedings deemed to have been struck out under subrule (1).

(e) Part 12

Omit the Part.

(f) Part 15 rule 2

Omit “a certificate of readiness is filed”, insert instead “a preliminary advice of hearing is issued”.

(g) Part 15 rule 3

(i) In the title to the rule, omit “certificate of readiness”, insert instead “preliminary advice of hearing”;

(ii) In subrule (1) omit “a certificate of readiness has been filed”, insert instead “a preliminary advice of hearing has been issued”.

(h) Part 16 rule 1 (1)

Omit “listing date has been allocated to” where occurring, insert instead “preliminary advice of hearing has been issued in”.

(i) Part 22 rule 1

Omit “under Part 12” wherever appearing.

(j) Part 22 rule 3 (1A)

(i) Omit “a request for listing has been filed”, insert instead “a preliminary advice of hearing has been issued”;

(ii) Omit “9”, insert instead “6”.

3. The Compensation Court Rules 1990 are amended as from 1st July 1996 as follows:

(a) Part 5 rule 20.

Omit the rule.

(b) After Part 5 rule 19, insert the following:

**Division 3—Applications and appeals under section 208M of the Legal Profession Act 1987**

**Interpretation**

20. In this Division:

“**appeal**” means appeal to the Court under section 208M of the subject Act;

“**application for leave**” means application under section 208M (2) of the subject Act seeking leave of the Court to appeal to the Court against a determination of a costs assessor;

“**subject Act**” means the Legal Profession Act 1987.

**Application for leave**

21. (1) An application for leave may be made by notice of motion under Part 16.

(2) An application for leave must be filed and served within 14 days of the date on which the decision sought to be appealed against was given, or within such extended time as the Court may fix.

(3) The Court may extend the time prescribed in subrule (2) at any time.

(4) The applicant for leave must file with, or include in, the notice of motion or a supporting affidavit:

(a) a statement of the points on which the applicant objects to the decision of the assessor;

(b) a statement of the reasons why leave should be given;

(c) all of the documents which were submitted by the parties for the consideration of the assessor, or copies of those documents; and

(d) where the assessor has given reasons for the decision sought to be appealed against, a copy of those reasons.

(5) On the day fixed for the hearing or adjourned hearing of the application, the Court may proceed to hear and determine the application or may adjourn it to another day.

(6) The Court may, whether or not it adjourns the application, require any party to produce any relevant document in the party’s possession or control, or to provide further particulars as to the party’s case in the application.

(7) Nothing in this rule prevents the Court from dealing with the application in chambers.

**Appeal**

22.(1) Where the Court grants leave to appeal under section 208M (3) of the subject Act, it may give directions as to the extent, if any, to which matter which was before it, and decisions made by it, on the application for leave are admissible or binding on the hearing of the appeal, and may:

- (a) proceed immediately to hear and determine the appeal; or
- (b) give such directions as to filing and service of documents, conferences, fixing of a hearing date, and any other matter as appear requisite for the hearing and determination of the appeal.

(2) If the Court so orders, an appeal may be heard and determined in chambers.

(c) Part 7 rule 1

Omit “under section 19(1) of the Act”.

(d) Part 7 rule 2

Omit “under section 19(1) of the Act”.

(e) Part 8 rule 5A

After Part 8 rule 5 insert:

**Service on Insurer**

5A. Where any insurer of a respondent is named in an originating process, a copy of that originating process shall be served on any such insurer.

(f) Part 27

Omit rules 4, 5, 6 and 7.

(g) Part 30

Omit rules 3, 4, 5 and 6 and insert instead:

**Appeal from commissioner**

3. (1) In this rule and in rule 4 “award” has the same meaning as provided by section 34A (6) of the Act.

(2) An appeal from a commissioner shall be made by the filing of a notice of appeal.

(3) A notice of appeal shall be filed within 28 days after the award is made.

(4) The notice of appeal shall state:

- (a) the number and year of the proceedings in which the award was made;
- (b) the heading and title of the proceedings, appropriately abbreviated;

- (c) the date of the award appealed from;
- (d) whether the appeal is from the whole or part only of the award, identifying such part;
- (e) the grounds on which the appeal is sought; and
- (f) the orders sought.

(5) The person making the appeal shall be called the “claimant” and each other party to the appeal shall be called an “opponent”.

#### **Leave to Appeal**

4.(1) An application for leave to appeal shall be made by notice of motion.

(2) The notice of motion seeking leave to appeal shall be filed within 28 days after the award is made.

(3) The party applying for leave to appeal shall file with or subscribe to the notice of motion a statement of:

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

(4) If a Judge grants leave to appeal, he may order the party applying for such leave to file a notice of appeal as required by subrule 3 (4) or make such other order as is appropriate for the expeditious hearing of the appeal.

#### **Further Evidence on Appeal**

5.(1) A party seeking to adduce further evidence on appeal shall give notice of such evidence to each other party as soon as it is possible to do so.

(2) The “special grounds” referred to in section 34A (4) of the Act shall, unless the Court otherwise orders, be established by evidence on affidavit.

#### **Appearance on Appeal**

6. Each opponent to an appeal or to an application for leave to appeal shall file a notice of his appearance, in accordance with Part 11 rule 2.

#### **References by commissioner to a Judge**

7.(1) A commissioner who refers a question to a Judge pursuant to section 34B of the Act shall endorse on the papers the question or questions that he refers to the Judge or shall state them orally and direct that a transcript of the question or questions be taken out and placed with the papers. The commissioner shall then direct the registrar to list the matter before a Judge.

(2) Where it appears to the Judge that the material provided in the papers is insufficient to enable him to determine the question or questions asked he may direct the commissioner to prepare a notice in writing which shall be called a "reference".

(3) A reference shall state:

- (a) the questions on which the Judge's opinion is sought;
- (b) when and how the question arose in the proceedings;
- (c) the ultimate facts proved or admitted in the proceedings; and
- (d) distinct findings of fact in relation to actual occurrences and circumstances upon which the commissioner based his conclusions or inferences, and distinct statements of those inferences.

(4) (a) Where a party applies to a commissioner to refer a question to a Judge, the commissioner may direct that party to draft a reference within 14 days.

(b) A party who drafts a reference shall file and serve a copy of it on each other party.

(c) Each other party shall, within 7 days after service on him of the draft reference notify the applying party in writing of any objections he makes, or amendments he desires, to the draft reference and file a copy of such notice.

(d) The commissioner shall, within 28 days after the order for the draft reference, list the proceedings before him for decisions as to the form of the reference.

(5) Where more than one party applies to a commissioner to refer a question to a Judge, the commissioner may direct any one of them to draft a reference in accordance with subrule (4).

(6) Where a commissioner makes a reference, the registrar shall list it for hearing before a Judge as soon as practicable.

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T J Doubleday  
Secretary, Rule Committee,  
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