



New South Wales

# Compensation Court Rule (Costs Provisions) 2000

under the

Compensation Court Act 1984

The Compensation Court Rule Committee made the following rule of court under the *Compensation Court Act 1984* on 13 July 2000.

S Davidson

Secretary of the Rule Committee

## Explanatory note

The object of this Rule is to amend the *Compensation Court Rules 1990* as a consequence of the operation of the Legal Profession Act 1987 and the regulations made under that Act and for other minor law revision purposes.

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## **Compensation Court Rule (Costs Provisions) 2000**

### **1 Name of Rule**

This Rule is the *Compensation Court Rule (Costs Provisions) 2000*.

### **2 Commencement**

This Rule commences on 21 July 2000.

### **3 Amendment of Compensation Court Rules 1990**

The *Compensation Court Rules 1990* are amended as set out in Schedule 1.

### **4 Notes**

The explanatory note does not form part of this Rule.

## **Schedule 1 Amendments**

(Clause 3)

### **[1] Part 29**

After rule 1, insert:

#### **“1A Application after commencement of the Legal Profession Reform Act 1993**

- (1) This Part has no operation after 30 June 1994 except as provided by:
  - (a) section 18 of the Act;
  - (b) the Workers Compensation Acts and the regulations made under those Acts;
  - (c) the Legal Profession Act 1987 and the regulations made under that Act; or
  - (d) subrule (2).
- (2) This rule shall not affect any right, privilege, obligation, liability or disentitlement acquired, accrued, or incurred on or before 30 June 1994.”

### **[2] Part 29**

After Part 29, insert:

## **“PART 29A COSTS AFTER 30 JUNE 1994**

### **1 Application**

- (1) The provisions of this Part apply subject to their terms, to and in respect of costs payable or to be assessed under any order of the Court or under the rules.
- (2) The application of this part is subject to:
  - (a) section 18 of the Act;
  - (b) the Workers Compensation Acts and the regulations made under those Acts; or

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(c) the Legal Profession Act 1987 and the regulations made under that Act.

#### **2 Interpretation**

In this Part, and unless the context or subject matter otherwise indicates or requires, a reference to costs is a reference to costs payable between party and party in respect of proceedings, including disbursements.

#### **3 Time for dealing with costs**

The Court may in any proceedings exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

#### **4 Worker's costs**

Where in any proceedings the Court makes a final order, or gives a final decision, in favour of the worker, the worker shall, unless the Court otherwise orders, be entitled to recover the worker's costs of the proceedings against the employer against whom the final order or decision was made or given.

#### **5 Commutation cases**

Where an employer commences proceedings under section 51 of the 1987 Act with the consent of the worker, the employer shall, unless the Court otherwise orders, pay the costs of the worker of the proceedings whatever be the result of the proceedings.

#### **6 Costs where other proceedings**

Where in any proceedings a worker is entitled to recover costs against an employer or insurer, those costs shall not be reduced or apportioned because any part of them was incurred also in respect of proceedings under the Uninsured Liability and Indemnity Scheme, or in respect of proceedings against another

person against whom no award has been made, except to the extent that any such part has been received by the worker.

**7 Assessed costs and other provisions**

- (1) Subject to this Part, where, by or under the rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to assessed costs.
- (2) Where the Court orders that costs be paid to any person, the Court may, at any time prior to the costs being referred for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:
  - (a) a proportion specified in the order of the assessed costs;
  - (b) the assessed costs from or up to a stage of the proceedings specified in the order; or
  - (c) a gross sum specified in the order instead of the assessed costs.

**8 Discovery before action**

The Court may in any action require any person to pay the costs of a party to the action of proceedings under Part 4A in respect of that action including payments of conduct money and payments on account of expenses and loss under that Part.

**9 Agreement as to costs**

- (1) Where costs are payable by one party to another, those parties may agree as to the amount of the costs.
- (2) An amount of costs agreed to under subrule (1) shall not be included in any certificate issued under section 23 (1) of the Act unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

**10 Agreement as to part of costs**

- (1) Notwithstanding anything in this Part, where costs are payable by one party to another, the parties may agree as to the amount of those costs payable in respect of any item or items of work done.

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- (2) An amount of costs agreed to under subrule (1) shall not be included in any certificate issued under section 23 (1) of the Act unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

#### **11 Order for costs—when payable**

- (1) Where, before the conclusion of any proceedings, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until after the conclusion of the proceedings.
- (2) Where, in any proceedings, it appears to the registrar, on application, that there is no likelihood of any further order being made in the proceedings, the registrar may order that any costs ordered to be paid shall be payable forthwith.

#### **12 Party and party basis**

Costs payable by or under the rules or any order of the Court shall be payable on a party and party basis unless the rules or an order provide that they are payable on an indemnity basis.

#### **13 Indemnity basis**

On an assessment on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the assessor may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

#### **14 Costs order to confirm earlier costs orders**

An order as to costs made in proceedings after 30 June 1994 shall unless the Court otherwise orders, be taken to expressly confirm all earlier orders as to costs made in the proceedings.”

BY AUTHORITY