



New South Wales

Compensation Court Rule (Miscellaneous Amendments and Minor Law Revision) 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* to effect various miscellaneous amendments and for minor law revision purposes.

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1 Name of Rule

This Rule is the *Compensation Court Rule (Miscellaneous Amendments and Minor Law Revision) 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 1, rule 5 (1)

- (i) In alphabetical order, insert:
“**Court** includes a commissioner when exercising the functions of the Court in respect of any matter allocated to the commissioner and a registrar when exercising any function of the Court conferred on a registrar by or under the Act or any other Act.”
- (ii) In the definition of **privileged document or thing**:
 - (a) After “;” where appearing immediately following the word “information” in (ii) A (II), omit “or”;
 - (b) Omit subparagraph (ii) (B);
 - (c) After subparagraph (ii), insert:
“(iiA) a document of which evidence could not be adduced in the proceedings by virtue of the operation of section 126H of the Evidence Act;”

[2] Part 2, rule 1

Omit subrule 3. Insert instead:

- “(3) Except on Saturdays, Sundays and public holidays, and whether in vacation or otherwise, the registry at Sydney and at any other place shall be open to the public for business between 9.00 in the morning and 4.00 in the afternoon.”

[3] Part 2, rule 1 (4)

After “Judge” where secondly appearing, insert “or the registrar”.

[4] Part 3, rule 2 (1) and (2)

After “Judge” in each subrule, insert “, commissioner”.

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[5] Part 3, rule 3 (1) and (3)

After “Judge” in each subrule, insert “or a commissioner”.

[6] Part 4, rule 2 (1)

Omit “Subject to subrule (4), the”. Insert instead “The”.

[7] Part 4, rule 4

- (i) Omit “the day on which the fixed vacation begins”.
Insert instead “25 December”.
- (ii) Omit “the 14th”. Insert instead “9”.

[8] Part 5, rule 4B (8)

After “1997”, insert “and before 11 December 1998”.

[9] Part 5, rule 4B (8)

After “1997”, insert “and before 11 December 1998”.

[10] Part 6, rule 17

Omit the heading. Insert instead **“Applications in the case of death of a worker”**.

[11] Part 6, rule 17

Omit subrule (1). Insert instead:

- “(1) In proceedings for the benefit of dependants in the case of the death of a worker, the following persons shall be joined as respondents:
 - (a) the personal representative (if any) of the worker, if that personal representative is not already an applicant;
 - (b) if the proceedings are brought by or on behalf of some only of the dependants, the other dependants; and
 - (c) any other person claiming to be a dependent.”

[12] Part 6, rule 17 (2)

Omit the subrule.

[13] Part 11, rule 3 (2) (b)

Omit “reply”. Insert instead “rely”.

[14] Part 15, rule 2

After “hearing” where first appearing, insert “or notice of call-over”.

[15] Part 15, rule 3 (1)

- (i) After “hearing” where first appearing, insert “or notice of call-over”.
- (ii) Omit “of” where last appearing. Insert instead “for”.

[16] Part 16, rule 1 (1) (a) and (b)

After “hearing” in each subparagraph, insert “or notice of call-over”.

[17] Part 17, rule 9 (1) (d)

Omit the subparagraph.

[18] Part 17, rule 9 (2) (a)

Omit the subparagraph.

[19] Part 19, rule 2 (3) (c) (ii) (II)

After “;”, omit “or”.

[20] Part 19, rule 2 (3) (c) (ii) B

Omit the subparagraph.

[21] Part 19, rule 2 (3) (c)

After subparagraph (ii), insert:

“(iiA) a document of which evidence could not be adduced in the proceedings by virtue of the operation of section 126H of the Evidence Act;”

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[22] Part 20, rule 5A

Omit subrule (1). Insert instead:

“(1) An application for reference to a medical referee or medical panel shall be lodged with the registrar together with sufficient copies for every respondent to the application.”

[23] Part 20, rule 5A (2)

Omit the subrule.

[24] Part 20, rule 5A (3)

Omit the subrule. Insert instead:

“(3) The registrar shall endorse on or attach to the application and on sufficient copies of the application a notice containing the following matter:

- (a) where any respondent to the application objects to the reference applied for, that respondent may, within 21 days from the date of the notice, request that the application be listed before the registrar for argument and determination;
- (b) any such request shall be made in accordance with Part 5 rule 9A; and
- (c) that, in certain circumstances, a certificate or determination of a medical referee or medical panel may be conclusive evidence of the worker’s condition;

and shall send a copy of the application so endorsed to every respondent to the application.”

[25] Part 20, rule 5A (4)

Omit the subrule.

[26] Part 20, rule 5A (5))

Omit the subrule. Insert instead:

“(5) In the application of section 122 of the 1998 Act for the purposes of section 122 (12) of that Act, section 122 (2) of that

Act shall be construed as requiring any application to be made jointly by the worker and the employer.”

[27] Part 20

After rule “5A”, insert:

“5B Certificate

- (1) A certificate given under section 122 (5) of the 1998 Act shall be in or to the effect of the approved form.
- (2) The registrar shall as soon as practicable after receiving a certificate furnish a copy to each party to the application.”

[28] Part 20, rule 10

After subrule 2, insert:

“(3) This rule applies except where otherwise provided in section 18 of the Act.”

[29] Part 21

After rule 3, insert:

“3A Evidence otherwise than on oath

Unless the Court otherwise orders, a person may be examined in another country pursuant to an order under rule 1 otherwise than on oath or affirmation if the person is examined in accordance with the procedure of that country.”

[30] Part 21, rule 7

Omit the rule. Insert instead:

“7 Examination of additional persons

- (1) Where the examiner is a Judge or commissioner, the examiner may, on application of a party to the proceedings, take the examination of any person not named or provided for in the order for examination.

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(2) Where the examiner is not a Judge or commissioner, the examiner may, with the consent in writing of each party to the proceedings, take the examination of any person not named or provided for in the order for examination and, if the examiner does so, shall annex to the written record or transcript of the depositions of that person the consent of each of the parties.”

[31] Part 21, rule 8 (d)

Before “if”, insert “subject to section 18 of the Act.”.

[32] Part 21, rule 9

Omit subrule (1). Insert instead:

“(1) The deposition of a person examined before an examiner shall be recorded by means of writing, shorthand, stenotype machine, or sound recording apparatus.”

[33] Part 21, rule 9

After rule 9 insert:

“9A Videotaping etc, the examination

The court or the examiner may give directions for making, by any audio-visual method, a recording of proceedings on an examination.”

[34] Part 21, rule 10 (1)

Omit the subrule. Insert instead:

“(1) Where for the purposes of rule 9 (1) the deposition of a person examined is recorded by means of writing, the written record shall be read over either to or by the person, as the examiner may direct, and be signed by the person examined.

(1A) A transcript shall be prepared of a deposition recorded by one of the means, other than writing, referred to in rule 9 (1) and the person who prepared the transcript shall certify that it is a correct transcript of the deposition so recorded.”

[35] Part 21, rule 10 (2)

Omit the words “the deposition by his signature”. Insert instead: “by the examiner’s signature the written record or transcript of the deposition and any document which constitutes a recording under rule 9A”.

[36] Part 21, rule 10 (3)

After “to” where first appearing, insert “the written record or transcript of”.

[37] Part 21, rule 10 (4)

- (i) Omit “deposition”. Insert instead “written record or transcript of the deposition and any document which constitutes a recording under rule 9A”.
- (ii) After “it”, insert “or them”.

[38] Part 21, rule 10

After subrule 5, insert:

“(6) Subrules, (1), (3) and (4) do not apply where the examiner is a Judge or a commissioner.”

[39] Part 22, rule 3 (1A)

After “hearing” insert “or notice of call-over”.

[40] Part 23, rule 2 (2)

After “Act,” where secondly appearing insert “any direction of the Court”.

[41] Part 23

After rule 2 insert:

“2A Evidence by telephone, video link, etc

Subject to the Evidence (Audio and Audio Visual Links) Act 1998 and to Part 4 of the Evidence and Procedure (New Zealand) Act 1994 of the Commonwealth, the Court may in any proceedings order, on terms, that evidence or submissions may be received by telephone, video link or other form of communication.”

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[42] Part 23, rule 4 (2)

Omit “19 of the Act”. Insert instead “109 of the 1998 Act”.

[43] Part 23, rule 8 (2) (a)

After “time”, insert “and”.

[44] Part 23, rule 8 (2) (b)

Omit the subparagraph.

[45] Part 23, rule 13 (1) (b)

Omit “.”. Insert instead “, or”.

[46] Part 23, rule 13 (1)

After subparagraph (b), insert:

“(c) production by any corporation of any document or thing described in the order.”

[47] Part 23, rule 13 (2)

After “to,”, insert “or for the production by any corporation to.”

[48] Part 23

After rule 14, insert:

“14A Attendance of prisoner

1. This rule applies to an application for an order to bring up before the Court a prisoner for the purpose of the examination of that person in proceedings.
2. An application for an order shall be made by filing a notice of motion and supporting affidavit.
3. The notice of motion and supporting affidavit must be served on the governor of the correctional centre where the witness is confined at least 2 days before the return date of the motion.
4. The Court may if it thinks fit dispense with the requirements of subrules 2 and 3 provided it is satisfied that adequate notice of

the application has been given to the governor of the correctional centre.”

[49] Part 23, rule 15

After subrule 3, insert:

“(3A) Where a party to any proceedings claims privilege from production of any document or thing the court may, if it thinks fit:

- (a) permit evidence in relation to the claim to be given by any other party by affidavit or otherwise; and
- (b) permit cross-examination on any affidavit used in support of the claim.”

[50] Part 24, rule 2 (1)

Omit “on which his attendance is required”.

[51] Part 24

After rule 2, insert:

“2A Expense and loss

Where a person named is not a party and in consequence of service of a subpoena, reasonably incurs expenses or loss substantially exceeding any sum paid under rule 2 or rule 9, the Court may order that the party who requested the issue of the subpoena pay to the person named an amount in respect of the expense or loss.”

[52] Part 24, rule 3

Omit from the heading “by non-party”.

[53] Part 24, rule 3 (1)

Omit the subrule. Insert instead:

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- “(1) The person named in a subpoena for production of any document or thing may produce the document or thing by post, courier or otherwise to the address of the Court stated on the subpoena.
- (1A) Unless the subpoena otherwise provides, the person named in a subpoena for production may produce clear, sharp photocopies of the documents the subject of the subpoena.”

[54] Part 24, rule 3 (2)

Omit subparagraph (a).

[55] Part 24, rule 3 (3)

Omit the subrule.

[56] Part 24, rule 6 (4)

Omit the subrule.

[57] Part 24, rule 6 (5) (a) (i)

Omit “in Sydney, Parramatta, Newcastle and Wollongong.”

[58] Part 24, rule 6 (5A)

Omit “apply by affidavit for”. Insert instead “request the”.

[59] Part 24, rule 6 (6) (b)

Omit “if the court or the registrar so orders, and any such order may be made on terms.”

[60] Part 24, rule 6 (6)

After subparagraph (b), insert on a separate line:

“if the Court or the Registrar so orders, and any such order may be made on terms.”

[61] Part 24, rule 6

After subrule 6, insert:

“(6A) An order to inspect documents under subrule (6) shall be taken to include an order to take copies of any document so inspected unless the Court or the registrar otherwise orders.”

[62] Part 24, rule 8 (2)

Omit “where the person named in a subpoena is not a party to the proceedings”.

Insert instead “where a subpoena requires attendance or production or both on a specified date.”

[63] Part 24, rule 9 (2)

Omit “the amount of \$25”. Insert instead “an amount of not less than \$28”.

[64] Part 24, rule 10 (1) and (2)

Omit the subrules. Insert instead:

“The Court may, of its own motion or on the motion of any person having a sufficient interest, set aside a subpoena wholly or in part.”

[65] Part 24, rule 11 (1)

- (i) Omit “for production”.
- (ii) After “written”, insert “or oral”.

[66] Part 24, rule 11

After subrule (1), insert:

“(1A) Subrule (1) has no application in relation to a subpoena to give evidence where an order has been made vacating the hearing date specified in the subpoena.”

[67] Part 24, rule 11 (2)

- (i) After “named” where firstly appearing, insert “has not been called to give evidence or”.
- (ii) After “written”, insert “or oral”.

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[68] Part 24, rule 13

After “thing”, insert “in connection with any application ancillary to the proceedings or at the hearing of the proceedings”.

[69] Part 26, rule 2

Omit “a specified officer of the Court or the Chief Court Reporter”.
Insert instead “the registrar”.

[70] Part 26, rule 3 (2)

After “Judge”, insert, “, commissioner”.

[71] Part 26, rule 4

After subrule (2) insert:

“(3) The registrar may, if the registrar thinks fit, dispense with compliance with the requirements of subrules 2 (a) and 2 (b).”

[72] Part 26, rule 5 (c)

Omit “taxation”. Insert instead “assessment”.

[73] Part 27, rule 8

Omit “, or case stated by,”.

[74] Part 31, rule 3 (2)

Omit the subrule.

[75] Part 32, rule 3 (7)

Omit “the back, or upon a separate backsheet:”. Insert instead:
“a separate backsheet, where the document is filed in matters commenced before 1 January 1995, and on the first page, where the document is filed in matters commenced from 1 January 1995:”.

[76] Part 32, rule 3 (8)

Omit “proscribed, a”.

Insert instead “prescribed or the Court otherwise orders, a facsimile.”.

[77] Part 35, rule 5

Omit the rule.

BY AUTHORITY