



Interim Workers Compensation Commission Rules (Amendment No 1) 2002

under the

Workplace Injury Management and Workers Compensation Act
1998

I John Della Bosca, Special Minister of State, do by this my Order make the following Rules of the Workers Compensation Commission under the *Workplace Injury Management and Workers Compensation Act 1998*.

Dated this 30th day of July 2002.

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

Explanatory note

The object of these Rules is to amend the *Interim Workers Compensation Commission Rules 2001* to provide new procedures with respect to the exercise by the Workers Compensation Commission of its powers under section 357 of the *Workplace Injury Management and Workers Compensation Act 1998* (**the 1998 Act**) to order a party to proceedings to produce documents.

These Rules also make a minor amendment to a provision concerning service of a summons and make amendments to clarify references to provisions of the 1998 Act.

These Rules are made under the 1998 Act, including sections 357 and 364 (the general rule-making power).

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**Interim Workers Compensation Commission Rules
(Amendment No 1) 2002**

1 Name of Rules

These Rules are the *Interim Workers Compensation Commission Rules (Amendment No 1) 2002*.

2 Commencement

These Rules commence on 19 August 2002.

3 Amendment of Interim Workers Compensation Commission Rules 2001

The *Interim Workers Compensation Commission Rules 2001* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Rule 14 Commencement by application for interim payment direction

Omit “Chapter 8” from rule 14 (1) (c). Insert instead “Chapter 7”.

[2] Rule 28 Registrar’s powers

Omit “Part 7 (Expedited assessment)” from rule 28 (1) (b).
Insert instead “Part 5 (Expedited assessment) of Chapter 7 of the 1998 Act”.

[3] Rule 28 (1) (c)

Omit “Part 8 (Medical assessment)”.
Insert instead “Part 7 (Medical assessment) of Chapter 7 of the 1998 Act”.

[4] Rules 31–33

Omit the rules. Insert instead:

Part 5A Directions for production and related matters

31 Definitions

In this Part:

the producer means the person named or proposed to be named in a direction for production.

first access order means an order specifying:

- (a) which party to proceedings is to have first access to documents produced to the Commission in accordance with a direction for production, and
- (b) the period of first access for that party.

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31A Request for direction for production

- (1) A party to proceedings may request the issue under section 357 of the 1998 Act of a direction for the production of documents by lodging a proposed direction for production with the Registrar.
- (2) A proposed direction for production must be lodged in the approved form.
- (3) The proposed direction for production must be lodged:
 - (a) if the party is the applicant—with the application for dispute resolution or within 5 days after being served with the respondent's reply, or
 - (b) if the party is the respondent—with the reply by the respondent to the application for dispute resolution, or
 - (c) if the party has been joined—with the reply by the party to the application for dispute resolution.
- (4) If a request for a direction for production is lodged otherwise than in accordance with subrule (3), the direction must not be issued unless the Registrar is satisfied that:
 - (a) the party requesting the direction was not aware, and could not reasonably have become aware through the exercise of due diligence, of the existence of the requested material at the time the direction was required to be lodged under subrule (3), and
 - (b) failure to issue the direction would result in a substantial injustice to the party requesting the direction, and
 - (c) the other party or parties to the proceedings will not be prejudiced by the issuing of the direction.
- (5) If a direction for production is requested other than in accordance with subrule (3), the party requesting the direction must serve the Registrar and the other party or parties to the proceedings with written submissions as to the criteria set out in subrule (4).

- (6) A party to the proceedings who wishes to object to the issue of a direction for production requested other than in accordance with subrule (3) must lodge written notice including the reasons for the objection with the Registrar within 2 days of being served with submissions in accordance with subrule (5).
- (7) The Registrar must determine an objection lodged in accordance with subrule (6).
- (8) The Registrar may determine an objection to the issue of a direction for production lodged in accordance with subrule (6) solely on the basis of written submissions lodged under subrules (5) and (6).
- (9) Without limiting subrule (8), when considering an objection to the issue of a direction for production the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer,
 - (b) list the objection for hearing before the Registrar,
 - (c) refer the objection to an Arbitrator for determination.

31B Direction for production

The Registrar may issue a direction for production where a request is made in accordance with rule 31A.

31C Access orders

- (1) The party requesting a direction for production must include a proposed first access order in the proposed direction.
- (2) Unless the Registrar otherwise orders, the first access order proposed by the requesting party under subrule (1) takes effect upon production of documents to the Commission under the direction for production.
- (3) The period of first access specified in a first access order must not exceed 5 days.
- (4) During the first access period, only the party named in the first access order may access documents produced under a direction for production.

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- (5) The other party or parties to the proceedings may access documents produced to the Commission under a direction for production for the same length of time as provided under the first access order after the time specified in the first access order has expired.
- (6) Despite subrule (1), the Registrar may:
 - (a) make a first access order as part of a direction for production if the requesting party has not included a proposed first access order, or
 - (b) make a first access order as part of a direction for production in different terms to the proposed first access order included by the requesting party.

31D Time for service and production

- (1) The Registrar must insert a date for production in a direction for production prior to sealing the direction.
- (2) Subject to subrules (3) and (6), the party requesting a direction for production must serve the producer and the other party or parties to the proceedings with a sealed copy of the direction for production not less than 5 days before the date for production specified in the direction.
- (3) A direction for production to be served interstate must be served in accordance with the procedure specified in the *Service and Execution of Process Act 1992* of the Commonwealth.
- (4) A party may apply to the Registrar to request abridged service of a direction for production.
- (5) Written reasons must be given by the party seeking abridged service at the time the direction for production is requested.
- (6) The Registrar may issue a direction for production with abridged service where the party seeking the abridgement establishes that the producer has consented to the abridgement or the Registrar is of the view that the circumstances of the case warrant abridgement.
- (7) The producer is not required to comply with a direction for production unless that person is served with the direction in accordance with this Rule.

31E Setting aside or varying a direction for production

The Registrar may, of his or her own motion, or on the request of any person having sufficient interest, but only if the request is made in accordance with the Rules, set aside or vary a direction for production wholly or in part.

31F Setting aside or varying a direction for production following non-production

- (1) Where a producer has not produced documents to the Commission in compliance with a direction for production, the party who requested the issue of the direction may by written notice to the Registrar not later than 2 days after the date for production make any one or more of the following requests:
 - (a) request that the producer be excused from complying with the direction,
 - (b) request that the terms of the direction be altered,
 - (c) request an extension of time of up to 5 days for compliance with the direction,
 - (d) request that the matter be referred to the Authority.

Note. The procedure by which the producer or a party to the proceedings objects to a direction for production is set out in rules 31G–31I.

- (2) A written notice lodged by the requesting party under subrule (1) must include reasons for the request.
- (3) A written notice lodged by the requesting party under subrule (1) (a) or (b) must be served on the other party or parties to the proceedings not later than 2 days after the date for production.
- (4) A party to the proceedings who wishes to object to a request lodged under subrule (1) (a) or (b) must lodge written notice including the reasons for the objection with the Registrar within 2 days of being served with the notice in accordance with subrule (3).
- (5) The Registrar must determine a request lodged under subrule (1).
- (6) The Registrar may determine a request lodged under subrule (1) solely on the basis of the written notice and written objection lodged under subrules (1) and (4).

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- (7) Without limiting subrule (6), when considering a request lodged under subrule (1) the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer,
 - (b) list the objection for hearing before the Registrar,
 - (c) refer the objection to an Arbitrator for determination.
- (8) The Registrar may set aside or vary the terms of a direction for production following determination of a request lodged under subrule (1).
- (9) The Registrar may only grant an extension of time for a producer to comply with a direction for production if the party who requested the direction has, before the date for production, taken all reasonable measures to ensure compliance with the direction.
- (10) Notice of an extension of time to comply with a direction for production granted by the Registrar must be served by the party requesting the extension of time on the producer and the other party or parties to the proceedings as soon as practicable.

31G Objection by producer

- (1) A producer may object to a direction for production by objecting to either or both of the following:
 - (a) the production of documents under the direction,
 - (b) the terms of access to the documents produced under the direction.
- (2) A producer who objects to a direction for production under subrule (1) must notify the Registrar of the objection in writing prior to the date for production.
- (3) An objection to a direction for production lodged in accordance with subrule (2) must clearly identify the documents that are the subject of the objection and provide reasons for the objection.
- (4) A producer who objects to a direction for production in accordance with subrule (2) is excused from complying with the direction until the Registrar determines the objection.

- (5) The Registrar must notify the parties to the proceedings of an objection to a direction for production lodged in accordance with subrule (2).
- (6) A party to the proceedings who wishes to oppose an objection to a direction for production must lodge written notice including the reasons for the opposition with the Registrar within 2 days of being notified of the objection in accordance with subrule (5).
- (7) The Registrar must determine an objection to a direction for production lodged under subrule (2).
- (8) The Registrar may determine an objection to a direction for production lodged in accordance with subrule (2) solely on the basis of the written objection and written opposition lodged in accordance with subrules (2) and (6).
- (9) Without limiting subrule (8), when considering an objection to a direction for production lodged in accordance with subrule (2) the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer,
 - (b) list the objection for hearing before the Registrar,
 - (c) refer the objection to an Arbitrator for determination.
- (10) The Registrar may set aside or vary the terms of a direction for production following determination of an objection lodged in accordance with subrule (2).

31H Objection by a party prior to production

- (1) A party to proceedings may object to a direction for production by objecting to any of the following:
 - (a) the production of documents under the direction,
 - (b) the terms of the first access order under the direction,
 - (c) the terms of access to the documents produced under the direction.
- (2) A party who objects to a direction for production under subrule (1) must notify the Registrar and the other party or parties to the proceedings of the objection in writing prior to the date for production.

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- (3) An objection to a direction for production lodged in accordance with subrule (2) must clearly identify the documents that are the subject of the objection and provide reasons for the objection.
- (4) A party to the proceedings who wishes to oppose an objection to a direction for production must lodge written notice including the reasons for the opposition with the Registrar within 2 days of being served with the notice of objection in accordance with subrule (2).
- (5) The Registrar must determine an objection to a direction for production lodged in accordance with subrule (2).
- (6) The Registrar may determine an objection to a direction for production lodged in accordance with subrule (2) solely on the basis of the written objection and written opposition lodged in accordance with subrules (2) and (4).
- (7) Without limiting subrule (6), when considering an objection to a direction for production lodged in accordance with subrule (2) the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer, or
 - (b) list the objection for hearing before the Registrar, or
 - (c) refer the objection to an Arbitrator for determination.
- (8) The Registrar may set aside or vary the terms of a direction for production following determination of an objection lodged in accordance with subrule (2).

311 Objection after production by a party entitled to first access

- (1) A party to proceedings who is entitled to first access to documents produced to the Commission in accordance with a direction for production may object to the other party or parties accessing those documents.
- (2) A party who objects to a direction for production under subrule (1) must prior to the expiry of the period contained in the first access order:
 - (a) separately package and identify the documents in respect of which the objection is made from the other documents that have been produced, and

- (b) notify the Registrar and the other party or parties to the proceedings of the objection in writing clearly identifying the documents that are the subject of the objection and providing reasons for the objection.
- (3) Where a party has lodged an objection in accordance with subrule (2), the other party or parties to the proceedings may access documents only in accordance with the terms of the objection unless the objection is determined under subrule (5).
- (4) A party to the proceedings who wishes to oppose an objection to access must lodge written notice including the reasons for the opposition with the Registrar prior to the expiry of the access period for that party.
- (5) When a notice of opposition to an objection has been lodged in accordance with subrule (4), the Registrar must determine an objection to access lodged in accordance with subrule (2).
- (6) The Registrar may determine an objection to access lodged in accordance with subrule (2) solely on the basis of the written objection and opposition lodged in accordance with subrules (2) and (4).
- (7) Without limiting subrule (6), when considering an objection to access in accordance with subrule (2), the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer,
 - (b) list the objection for hearing before the Registrar,
 - (c) refer the objection to an Arbitrator for determination.
- (8) The Registrar may vary the terms of a direction for production following determination of an objection to access lodged in accordance with subrule (2).

31J Compliance

- (1) The producer may produce documents by hand, post, DX, or electronic communication to the address of the Commission stated on the direction for production.

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- (2) Unless the direction for production otherwise provides, the producer may produce clear, sharp photocopies of the documents to be produced in compliance with a direction for production.
- (3) The Registrar must advise the parties to the proceedings when documents have been produced to the Commission in compliance with a direction for production.

31K Conduct money and expenses

- (1) A producer is not required to comply with a direction for production unless an amount sufficient to meet the reasonable expenses of complying with the direction is paid or tendered to the producer at the time of service of the direction or not later than a reasonable time before the time by which the producer must comply with the direction.
- (2) Where a producer is not a party and, in consequence of service of the direction, reasonably incurs expense or loss substantially exceeding any sum paid under subrule (1), the Registrar may order that the party who requested the issue of the direction pay to the producer an additional amount in respect of the expense or loss.

31L Inspection of produced material

A party or a party's legal representative or agent may, subject to these Rules and the terms of the access order made or varied by the Registrar:

- (a) inspect documents produced in compliance with a direction for production, and
- (b) make copies of any documents so inspected.

31M Return of documents

Documents produced to the Commission under a direction for production may be returned to the producer if requested, or destroyed by the Commission:

- (a) 28 days after notification of the Arbitrator's determination of proceedings if an appeal has not been lodged, or

- (b) after the determination of any appeal and any period for further appeal has expired.

31N Exercise of function or power under this Part

When proceedings are before any other member of the Commission, any function or power of the Registrar under this Part may be exercised by that member.

[5] Rule 34 Summons

Omit rule 34 (2).