



New South Wales

# Workers Compensation Commission Rules 2010

under the

Workplace Injury Management and Workers Compensation Act  
1998

I, Michael Daley, MP, Minister for Finance, do by this my Order make the following Rules of the Workers Compensation Commission in pursuance of the *Workplace Injury Management and Workers Compensation Act 1998*.

Michael Daley, MP  
Minister for Finance

## Explanatory note

The object of these rules is to provide rules for the Workers Compensation Commission.

The rules make provision for the following matters in connection with the jurisdiction of the Commission under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*:

- (a) administrative matters (including the establishment and location of the Commission's Registry and its hours of business),
- (b) the commencement of proceedings before the Commission,
- (c) the parties to proceedings before the Commission,
- (d) dispute resolution procedures,
- (e) proceedings before the Commission,
- (f) medical assessments and evidence,
- (g) appeals,
- (h) work injury damages.

These rules are made under the *Workplace Injury Management and Workers Compensation Act 1998*, including section 364 (the general rule-making power).

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Rule 1.1 Workers Compensation Commission Rules 2010

Part 1 Preliminary

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## **Workers Compensation Commission Rules 2010**

under the

Workplace Injury Management and Workers Compensation Act 1998

### **Part 1 Preliminary**

#### **1.1 Name of rules**

These rules are the *Workers Compensation Commission Rules 2010*.

#### **1.2 Commencement**

These rules commence on 1 October 2010.

#### **1.3 Repeal and transitional**

- (1) The *Workers Compensation Commission Rules 2006* are repealed.
- (2) Subject to these rules, these rules apply to proceedings commenced before or after the commencement of these rules.
- (3) Subject to these rules, a step taken in any proceedings in accordance with the *Workers Compensation Commission Rules 2006* before the commencement of these rules is as valid as it would be if taken in accordance with these rules.
- (4) A matter that was, in accordance with the *Workers Compensation Commission Rules 2006*, or with any relevant Practice Direction or WorkCover Guideline, referred or listed to be determined by an Arbitrator, and had not been so determined, before the commencement of these rules is to be determined by an Arbitrator whether or not these rules require matters of that class to be determined by the Registrar.
- (5) A matter that was, in accordance with the *Workers Compensation Commission Rules 2006*, or with any relevant Practice Direction or WorkCover Guideline, referred or listed to be determined by the Registrar, and had not been so determined, before the commencement of these rules is to be determined by the Registrar whether or not these rules require matters of that class to be determined by an Arbitrator.
- (6) Where, immediately before the commencement of these rules, a timetable was in effect in respect of any proceedings by virtue of any direction given or by the operation of the *Workers Compensation*

*Commission Rules 2006*, that timetable remains in effect until its completion unless the Commission or the Registrar otherwise directs.

#### 1.4 Interpretation

(1) In these rules:

**applicant** means a person referring a matter to the Commission for determination.

**day** means calendar day unless otherwise stated.

**electronic communication** has the meaning that it has for the purposes of the *Electronic Transactions Act 2000*.

**lodge** means lodge with the Commission, and, for the purposes of the *Electronic Transactions Act 2000*, or any other Act the operation of which requires a document to be filed with the Commission, includes “file”.

**Nominal Insurer** means Workers Compensation Nominal Insurer established under section 154A of the *Workers Compensation Act 1987*.

**notice in writing** includes notice given by electronic communication in accordance with these rules, and **written notice** has a similar meaning.

**party** means a party to proceedings.

**proceedings** means proceedings in the Commission, and includes matters commenced by application to the Registrar.

**respondent** means a person who is a party to a dispute other than the applicant.

**sealed** means affixed with the seal of the Commission.

**Workers Compensation Acts** means the 1987 Act and the 1998 Act.

**1987 Act** means the *Workers Compensation Act 1987*.

**1998 Act** means the *Workplace Injury Management and Workers Compensation Act 1998*.

(2) A document is registered for the purposes of these rules when it has been lodged and accepted by the Registrar.

(3) Words and expressions used in these rules have the same meanings as they have in the Workers Compensation Acts unless the context or subject-matter otherwise indicates or requires.

(4) A reference in these rules to the Commission includes a reference to the Registrar or any other member of the Commission.

#### 1.5 Procedure wanting or in doubt

(1) If a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by the Workers Compensation Acts or these rules, or by or under any other

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Rule 1.6 Workers Compensation Commission Rules 2010

Part 1 Preliminary

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Act, or the person is in doubt as to the manner or form of procedure, the Commission may, on application by the person or of its own motion, give directions.

- (2) Proceedings commenced in accordance with the directions of the Commission are taken to be properly commenced.
- (3) A step taken in accordance with the directions of the Commission is taken to be regular and sufficient.
- (4) An application for directions under this rule may be made whether or not proceedings have been commenced.

### 1.6 Adherence to and relief from rules

- (1) Subject to subrule (2) and to rule 1.5, the practice in the Commission is to be the practice provided by the Workers Compensation Acts or these rules.
- (2) The Commission may if it thinks fit on terms dispense with compliance with any of the requirements of these rules, either before or after the occasion for the compliance arises.
- (3) The general practice of the Commission prescribed by these rules applies to all proceedings authorised by any existing or future Act to be commenced, taken or continued in the Commission, except in so far as that practice is inconsistent with any provision of or under any such Act.
- (4) If a provision of these rules is not complied with in relation to the commencement (or purported commencement) of proceedings or conduct of proceedings, the Commission may determine that the proceedings are, or any step taken in the proceedings is, a nullity, in which case the Commission may strike out the proceedings or any such step.
- (5) If the Commission does not make a determination as referred to in subrule (4) in respect of a failure to comply with a provision of these rules, the failure is to be treated as an irregularity only.
- (6) For the avoidance of doubt, it is declared that the Registrar may exercise the Commission's functions referred to in subrule (4).
- (7) The striking out of proceedings under this rule does not prevent the proceedings from being recommenced.



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## Part 2 Administration

### 2.1 Registry

- (1) The Commission is to maintain a registry.
- (2) The registry is to be under the control and direction of the Registrar, subject to the general control and direction of the President.

### 2.2 Location of registry

- (1) The address of the registry is:
  - (a) for the purpose of delivery of documents:

As notified on the Commission's website, at [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)
  - (b) for the purpose of sending documents or correspondence:
    - (i) by post:

The Registrar  
Workers Compensation Commission  
PO Box 594, Darlinghurst NSW 1300
    - (ii) by document exchange (DX):

The Registrar  
Workers Compensation Commission  
DX 11524 Sydney Downtown
    - (iii) by facsimile transmission (fax):

The Registrar  
Workers Compensation Commission  
1300 368 018
    - (iv) by electronic communication (email):

[registry@wcc.nsw.gov.au](mailto:registry@wcc.nsw.gov.au)
- (2) The Registrar may vary the address, for any of the purposes mentioned in subrule (1), of the registry by advertising the varied address at appropriate times and in an appropriate manner.

### 2.3 Hours of business

Except on Saturdays, Sundays and public holidays or other days on which public offices are closed, the registry is to be open to the public for business at such times and on such days as the Registrar directs from time to time.

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Rule 2.4 Workers Compensation Commission Rules 2010

Part 2 Administration

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### **2.4 Registers**

- (1) The registry is to maintain the following:
  - (a) a register of approved medical specialists appointed by the President pursuant to section 320 of the 1998 Act,
  - (b) a register of all current proceedings,
  - (c) a register of Arbitrators and mediators appointed by the President pursuant to sections 368 and 318F respectively of the 1998 Act.
- (2) The registers referred to in subrule (1) are to be available for inspection by the general public on the Commission's website at <http://www.wcc.nsw.gov.au> or in such other manner and at such times as are determined by the Registrar from time to time.

### **2.5 Seal**

- (1) The Commission is to have a seal.
- (2) The seal is to be in such form (including electronic form) as the President may determine from time to time.
- (3) The seal is to be kept under the control of the Registrar at all times.
- (4) The seal is to be affixed to all documents registered by the Commission and to all certificates of decisions and determinations by the Commission and to such other documents as may be prescribed in these rules or as the President may determine from time to time.

## **Part 3 Time**

### **3.1 Fixing of time**

Where no time is fixed by the Workers Compensation Acts, or these rules, or by a Practice Direction, or by any decision or order of the Commission in any proceedings, for the doing of any thing in or in connection with the proceedings, the Commission may, by order, fix the time within which the thing is to be done.

### **3.2 Extension and abridgment of time**

- (1) The Commission may by order extend or abridge any time fixed by these rules or under Part 9 of Chapter 7 of the 1998 Act.
- (2) For the avoidance of doubt, it is declared that the functions of the Commission under subrule (1) may be exercised by the Registrar.
- (3) The Commission constituted as it was when it made a decision or order that fixed a period of time may, on the application of a party or of its own motion, extend or abridge that period.

### **3.3 Running of time**

Time does not run in respect of any proceedings during such period as may be fixed by order of the Commission in the proceedings or by a Practice Direction.

### **3.4 Time of commencement of proceedings**

The time of commencement of proceedings is the time when the Registrar registers the document lodged for the commencement of the proceedings by affixing the seal of the Commission.

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Rule 4.1 Workers Compensation Commission Rules 2010

Part 4 Documents generally

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### **Part 4 Documents generally**

#### **4.1 Form of documents**

- (1) The President may approve forms for use in the Commission, and a reference in these rules to an approved form is a reference to a form approved by the President.
- (2) The Registrar may cause the approved forms to be published on the Commission's website at <http://www.wcc.nsw.gov.au>.
- (3) Every document lodged at or served on the registry must:
  - (a) be headed so as to identify clearly the proceedings to which the document relates and the nature and purpose of the document, and
  - (b) be in the approved form and otherwise in substantial compliance with these rules, any Practice Direction, and any direction issued by the Registrar, and
  - (c) be clearly written, typed or reproduced.
- (4) For the purpose of determining whether a document is in the approved form, it is sufficient compliance with any requirement as to the form of a document if the document is substantially in accordance with the requirement or has only such variations as the case requires.
- (5) Where no form has been approved under this rule in respect of a document to be lodged, the document is to be drafted to the satisfaction of the Registrar.
- (6) The Registrar may refuse to accept, seal, or issue any document that, in the opinion of the Registrar, contravenes this rule.
- (7) Without limiting subrule (6), the Registrar may refuse to register an incomplete or otherwise defective document lodged for the commencement of proceedings.
- (8) Where the Registrar has refused to register a document as referred to in subrule (7), a new document may be lodged to replace that document.

#### **4.2 Amendment of documents**

- (1) Subject to subrule (2), the Commission may, on the application of a party to any proceedings before the Commission, give the party leave to amend any document lodged by the party in the proceedings if the Commission considers the amendment to be necessary for the avoidance of injustice.
- (2) Where a party seeks leave to amend a document, and the amendment would have the effect of substantially altering the parties to the

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proceedings or the nature of the proceedings, the Commission must not give the leave unless the Commission considers the amendment to be necessary in the interests of justice.

- (3) An amendment referred to in subrule (1) may be made at any stage of the proceedings (including the commencement or purported commencement of the proceedings), and on such terms as the Commission thinks fit, but any application for an amendment must be made at least 7 days before any teleconference fixed in the proceedings.
- (4) Where the Commission gives leave to amend a document the Commission may give directions as to the conduct of the proceedings consequent on the amendment, and any such direction must be complied with as though it were a provision of these rules.
- (5) Subrule (1) does not extend to allow amendment of any information or document required by rule 10.3 to be lodged.
- (6) Subject to subrule (2), where the amendment for which leave is sought:
  - (a) is of a minor nature and will not have any substantive effect on the case to be put by any party, or
  - (b) is consented to by all parties to the proceedings,the Registrar (or, if the proceedings have been referred to an Arbitrator and remain so referred, the Arbitrator) may give the party applying leave to make the amendment without complying with the provisions of subrule (7) or (8) (as the case may require).
- (7) Subject to subrule (6), where a party to any proceedings applies for leave to amend as referred to in subrule (1) before the proceedings are referred to an Arbitrator, the following provisions apply:
  - (a) the application must be in writing and must fully set out the grounds for the application,
  - (b) the party applying must serve the application on all other parties to the proceedings and must lodge the application with the Registrar,
  - (c) a party to the proceedings who wishes to object to the amendment must serve on the party applying, and lodge with the Registrar, written notice of the reasons for the objection within 2 working days of being served with the application,
  - (d) subject to paragraph (f) (iii), the Registrar must determine an application lodged under paragraph (b),
  - (e) the Registrar may determine an application lodged under paragraph (b) solely on the basis of the written application and the written notice of objection (if any),

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Rule 4.2 Workers Compensation Commission Rules 2010

Part 4 Documents generally

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- (f) without limiting paragraph (e), when considering an application lodged under paragraph (b) the Registrar may do any of the following:
  - (i) seek further oral or written information from the parties, or any of them,
  - (ii) list the application for hearing before the Registrar,
  - (iii) refer the application to an Arbitrator for determination.
- (8) Subject to subrule (6), where a party to any proceedings applies for leave to amend as referred to in subrule (1) after the proceedings are referred to an Arbitrator, the following provisions apply:
  - (a) the application must be in writing and must fully set out the grounds for the application,
  - (b) the party applying must serve the application on all other parties to the proceedings and must lodge the application with the Registrar,
  - (c) a party to the proceedings who wishes to object to the amendment must serve on the party applying, and lodge with the Registrar, written notice of the reasons for the objection within 2 working days of being served with the application,
  - (d) the Arbitrator must determine an application lodged under paragraph (b),
  - (e) the Arbitrator may determine an application lodged under paragraph (b) solely on the basis of the written application and the written notice of objection (if any),
  - (f) without limiting paragraph (e), when considering an application lodged under paragraph (b) the Arbitrator may do any of the following:
    - (i) seek further oral or written information from the parties or any of them,
    - (ii) list the application for hearing before the Arbitrator.

## Part 5 Electronic case management

### 5.1 Definition

In this Part:

*ECM system* means an electronic case management system established for the Commission and the Registrar under section 14B of the *Electronic Transactions Act 2000*.

### 5.2 Users of the system

- (1) Subject to any protocol established under subrule (2), and to any order of the Registrar, a person may not use the ECM system for particular proceedings unless the person is:
  - (a) a party to the proceedings, or
  - (b) a legal practitioner representing a party to the proceedings, or
  - (c) a person authorised to use the ECM system in relation to the proceedings by a legal practitioner representing a party to the proceedings.
- (2) The President may establish a protocol for the use of the ECM system, either generally or for particular proceedings.
- (3) Such a protocol may provide for public access to information held by the Commission in respect of any proceedings or proceedings generally, but not to the contents of any document held by the Commission in respect of any proceedings.
- (4) Subject to subrule (3), such a protocol may provide for the specification of the level of access to the system to which persons generally or persons of specified classes are entitled and the conditions of use of the system applicable to persons generally or persons of any such class.
- (5) In relation to any proceedings, the level of access to the ECM system to which a user is entitled, and the conditions of use applicable to a user, are subject to any order of the Registrar.

### 5.3 Electronic lodging of documents

- (1) In any proceedings, a document may be lodged on behalf of a party, by means of the ECM system, by:
  - (a) the party, or
  - (b) a person who is authorised to sign documents on the party's behalf, or
  - (c) a person who has been directed to lodge the document by a person who is so authorised.

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Rule 5.4 Workers Compensation Commission Rules 2010

Part 5 Electronic case management

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- (2) When lodged by means of the ECM system, a document that is required to be signed by a person is taken:
  - (a) to have been duly signed, and
  - (b) to have been duly authenticated for the purposes of section 14E of the *Electronic Transactions Act 2000*, if the person's name is printed where his or her signature would otherwise appear.
- (3) A document that is lodged by means of the ECM system is so lodged as soon as it is received by the Commission, and is registered as soon as it is accepted by the Registrar.
- (4) The Registrar must register a document that is lodged by means of the ECM system unless the Registrar refuses to accept the document under rule 4.1 (7).
- (5) Notice, and the date, of the lodging and registering of a document is to be given, by means of the ECM system, to the person by whom the document was lodged.

### 5.4 Lodging of statutory declarations

- (1) This rule applies to a statutory declaration that is lodged by means of the ECM system.
- (2) In the case of a statutory declaration lodged by a legal practitioner or agent of a party, the legal practitioner or agent is taken:
  - (a) to have affirmed to the Commission that he or she has possession of the original statutory declaration, and
  - (b) to have undertaken to the Commission that, if the Commission so directs, he or she will lodge the original statutory declaration in accordance with the direction.
- (3) In the case of a statutory declaration lodged otherwise than by a legal practitioner or agent, the original statutory declaration must be lodged if the Commission so directs.
- (4) Any document referred to in a statutory declaration that cannot be lodged by means of the ECM system is taken to be an exhibit, and not an annexure, regardless of the terms of the statutory declaration.

### 5.5 Electronic issuing of a document

The Commission or Registrar may issue a document to any party by means of the ECM system.



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## Part 6 Persons under legal incapacity

### 6.1 Definition

In this Part, *person under legal incapacity* means:

- (a) a child under the age of 18 years, and
- (b) a temporary patient, continued treatment patient or forensic patient within the meaning of the *Mental Health Act 1990*, and
- (c) a person under guardianship within the meaning of the *Guardianship Act 1987*, and
- (d) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*, and
- (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.

### 6.2 Proceedings for work injury damages

Where a party to proceedings for work injury damages is a person under legal incapacity, the provisions of the *Uniform Civil Procedure Rules 2005* relating to such persons apply to the proceedings as though the proceedings were proceedings in the District Court.

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Rule 7.1 Workers Compensation Commission Rules 2010

Part 7 Representation

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### **Part 7 Representation**

#### **7.1 Notice of representation**

- (1) A party to proceedings must notify the Registrar and the other parties of the appointment at any stage of the proceedings of a legal practitioner or agent to represent the party, within 7 days of the appointment.
- (2) If at any stage in proceedings a party changes the legal practitioner or agent by whom the party is represented, the party must notify the Registrar and the other parties of that change within 7 days.
- (3) If at any stage in proceedings a legal practitioner or agent representing a party ceases to represent the party, the legal practitioner or agent must so notify the Registrar and the other parties within 7 days.
- (4) If the legal practitioner or agent is to represent the party from the commencement of proceedings, the notice required under subrule (1) is deemed to be given if the legal practitioner or agent signs the first document lodged on behalf of the party in the proceedings and gives in that document the address of the legal practitioner or agent as the party's address for service.
- (5) A notice under this rule must indicate whether the authority of the legal practitioner or agent to act on behalf of the party in the proceedings is limited or restricted in any way and, if so, in what manner and to what extent, and unless the notice contains such an indication the Registrar is entitled to assume that the authority is not limited or restricted.
- (6) A notice required under this rule to be given by a party may be given by the party's legal representative or agent.

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## Part 8 Service and lodging of documents

### 8.1 Service of documents by or on Commission and lodging of documents

- (1) All documents required or permitted to be lodged in or with, or issued by, the Commission must be lodged at, or issued from, the registry.
- (2) Subject to subrule (3), lodging of documents with, or issuing or service of documents by, the Commission may be by means of hand delivery, post, document exchange (DX), facsimile transmission (fax) or electronic communication, in accordance with these rules and the Workers Compensation Acts.
- (3) The Registrar may direct that a document, or documents of a class, can or cannot be lodged with or served on the Commission by fax.
- (4) Subject to subrule (3), a document may be lodged with or served on the Commission, and correspondence directed to the Commission may be forwarded to the Commission:
  - (a) by hand, by delivering it to the Commission at the registry, or
  - (b) by post, by sending it by prepaid post to the postal address set out in, or varied under rule 2.2, or
  - (c) by DX, by leaving it in the DX box set out in, or varied under, rule 2.2 or in another DX box for transmission to that DX box, or
  - (d) by fax, by faxing it to the fax number set out in, or varied under, rule 2.2 and receiving notification on the sending facsimile machine of a successful transmission, or
  - (e) by electronic communication, by sending an electronic communication of the document or correspondence to the email address set out in, or varied under, rule 2.2.
- (5) Except as provided by subrule (6), a document is lodged with or served on the Commission, and correspondence directed to the Commission is received by the Commission by 4:30pm as set out in subclauses (a)–(c), but if that time is after 4.30pm on any day, or is on a Saturday, Sunday or public holiday, on the next day that is not a Saturday, Sunday or public holiday:
  - (a) if by hand, on the day of delivery, or
  - (b) if by post, or DX on the day of receipt at the registry, or
  - (c) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of notification of a successful transmission), or
- (6) For the purpose of subrule (4) (e), any document that is lodged with or served on the Commission and correspondence directed to the Commission by electronic communication is received by the

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Rule 8.1 Workers Compensation Commission Rules 2010

Part 8 Service and lodging of documents

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Commission at the time of entering the information system at the email address set out in, or varied under, rule 2.2, but if that time is after 5.00pm New South Wales standard time or New South Wales summer time on any day, it is taken to have been received on the next day that is not a Saturday, Sunday or public holiday.

- (7) Except as provided by subrule (8), a document is served by the Commission, and correspondence forwarded by the Commission is received by 4:30pm as set out in subclauses (a)–(d) but if that time is after 4.30pm on any day, or is on a Saturday, Sunday or public holiday, on the next day that is not a Saturday, Sunday or public holiday:
  - (a) if by hand, on the day of delivery, or
  - (b) if by post, on the fourth day after the day of sending by prepaid post, or
  - (c) if by DX, on the day following the day of leaving in the DX box of the person to whom it was addressed or in another DX box for transmission to that DX box, or
  - (d) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of notification of a successful transmission) or,
- (8) For the purpose of subrule (4) (e), any document that is served by the Commission and correspondence forwarded by the Commission by electronic communication is received at the time of entering the information system of the addressee, but if that time is after 5.00pm New South Wales standard time or New South Wales summer time on any day, it is taken to have been received on the next day that is not a Saturday, Sunday or public holiday.
- (9) Service by the Commission on, or forwarding of correspondence by the Commission to, a party by electronic communication may be effected only if the party gives as part of its address for service an email address.
- (10) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth.

**8.2 Service on Authority**

- (1) Where these rules require service on the Authority, that service is to be effected at the office of the Authority at:

Legal Group	OR	Claims Branch
WorkCover NSW		WorkCover NSW
Level 1, 60–70 Elizabeth Street		Level 4, 92–100 Donnison Street
Sydney 2000.		Gosford 2250
(Non Nominal Insurer matters)		(Nominal Insurer matters)

- (2) Service of a document may be effected at the office of the Authority:
- by hand, by delivering it to the address set out in subrule (1), or
  - by post, by sending it by prepaid post to:

Legal Group	OR	Claims Branch
WorkCover NSW		WorkCover NSW
GPO Box 2677		Locked Bag 2906
Sydney NSW 2001,		Lisarow NSW 2252, or

- by DX, by leaving it in the DX box at DX 731, Phillip Street Sydney or in another DX box for transmission to that DX box.

**8.3 Address for service**

- The address for service of a party to any proceedings is, in the case of the applicant, the address set out as the applicant's address in the first document lodged on behalf of the applicant in the proceedings, and in the case of a respondent, the address set out as the respondent's address in that document unless the respondent indicates in writing a different address.
- A respondent's address set out on behalf of the applicant as referred to in subrule (1) must be the address of the respondent's principal place of business or residence last known to the applicant, or, in the case where the respondent is a corporation, the address of the respondent's registered office.
- Subject to subrule (2), a party's address for service may be or include a postal address, document exchange (DX) box, fax number, email address (for electronic communications) or a physical address.
- A party may give its address for service as care of its legal representative or agent.

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Rule 8.4 Workers Compensation Commission Rules 2010

Part 8 Service and lodging of documents

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- (5) A party to proceedings, or the party's legal representative or agent, may change the party's address for service at any stage of the proceedings, but must notify the Registrar and the other parties to the proceedings within 2 working days of the change.

### 8.4 Service at address for service

- (1) A document is taken to have been served on or provided to a party if the document is delivered, or forwarded by one of the methods referred to in subrule (2), to the address for service of the party.
- (2) Service of a document by a party on another party is taken to be effected if received by 5pm as follows. If that time is after 5pm on any day, or is on a Saturday, Sunday or public holiday, on the next day that is not a Saturday, Sunday or public holiday:
- (a) if by hand, on the day of delivery, or
  - (b) if by post, on the fourth day after the day of sending by prepaid post, or
  - (c) if by DX, on the day following the day of leaving in the DX box of the party to whom it was addressed or in another DX box for transmission to that DX box, or
  - (d) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of a notification of a successful transmission), or
  - (e) if by electronic communication, at the time of entering the information system addressed to the email address set out in the address for service.
- (3) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth.

### 8.5 Sealed copies of documents

Where a party is required to serve a sealed copy of a document:

- (a) if the document is lodged in the form of a hard copy, the party must tender to the registry with the document one additional copy of the document and as many other additional copies of the document as there are parties to be served, and
- (b) on registering the document, the Registrar must seal any copies of the document tendered as required by paragraph (a) and return those copies to the party, and
- (c) the party must, within 7 days after service of the document, lodge a certificate certifying the date of service, the method of service, the party or other person served, and the address at which service was effected.

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**8.6 Substituted service**

- (1) Where for any reason it is impracticable to effect service of a document on a party by any method provided for in this Part, the Registrar may, on application supported by a statutory declaration showing grounds, by order direct that instead of service such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the party.
- (2) The Registrar may order that service be taken to have been effected on the happening of any specified event or on the expiry of any specified time.

**8.7 Service in a foreign country**

Where a document is to be served in a foreign country, the document is to be served in accordance with these rules:

- (a) subject to any applicable convention relating to the service of documents made between Australia and the country of service, and
- (b) with a translation in the official language of the country of service, with a certificate setting out the name and relevant qualifications of the translator.

## **2010 No 586**

Rule 9.1 Workers Compensation Commission Rules 2010

Part 9 Proceedings commenced other than by application to resolve a dispute

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### **Part 9 Proceedings commenced other than by application to resolve a dispute**

#### **9.1 Application of Part**

- (1) This Part applies to proceedings that are commenced other than by way of an application to resolve a dispute.
- (2) This Part is to be read in accordance with any relevant WorkCover Guidelines.

#### **9.2 Proceedings commenced by application for interim payment direction**

- (1) Proceedings under section 297 of the 1998 Act in relation to:
  - (a) the failure to determine a claim for weekly benefits as and when required by the 1998 Act, or
  - (b) the issue of a dispute notice in respect of a claim for weekly benefits, or
  - (c) the failure to determine a claim for medical expenses compensation as and when required by the 1998 Act, or
  - (d) the issue of a dispute notice in respect of a claim for medical expenses compensation, or
  - (e) the failure to commence provisional payments of compensation as required by Division 1 of Part 3 of Chapter 7 of the 1998 Act following initial notification of an injury,are to be commenced by way of application for an interim payment direction.
- (2) An application for an interim payment direction is to be lodged with the Commission and include as attachments the information and other documents required by the approved form of application.
- (3) The applicant is to serve the application on the respondent on the same day as the application is lodged with the Commission, and is not required to serve a sealed copy of the application.
- (4) If the respondent is an employer (but not a self-insurer) the applicant must also, and on the same day, serve a copy of the application on the employer's insurer.
- (5) The Registrar may provide a copy of the application to the respondent, and may obtain the respondent's views as to the application in such manner as the Registrar considers appropriate.



**9.3 Interim payment directions**

An interim payment direction is to include:

- (a) the name of the party to whom it is addressed, and
- (b) the name and address of the person to whom payment is to be made, and
- (c) whether the direction is in respect of weekly payments or is for medical expenses, and
- (d) in the case of weekly payments, the amount and the number of weeks for which the payments are to be made and when payments are to commence and conclude, and
- (e) in the case of medical expenses, the amount to be paid and the time by which payment is to be made, and
- (f) advice that a person who fails to comply with an interim payment direction is guilty of an offence in accordance with section 300 of the 1998 Act, and
- (g) the conditions (if any) subject to which the direction is given.

**9.4 Notice of revocation by Registrar of interim payment direction**

- (1) The Registrar can, acting under section 299 (1) of the 1998 Act, revoke an interim payment direction on application by a party or on the Registrar's own motion.
- (2) An application for revocation by the Registrar of an interim payment direction is to be lodged with the Commission and is to include as attachments the information and other documents required by the approved form of application.
- (3) The applicant for revocation is to serve the application on the respondent to the application on the same day as the application is lodged with the Commission, and is not required to serve a sealed copy of the application.
- (4) The Registrar may provide a copy of the application to the respondent to the application, and may obtain that respondent's views as to the application in such manner as the Registrar thinks appropriate.
- (5) Notice of any revocation by the Registrar of an interim payment direction is to be given by the Registrar to each of the parties to the proceedings.

**9.5 Refund of interim payment direction payments**

An order for the purpose of section 304 of the 1998 Act is to include:

- (a) the name of the person to whom it is addressed, and

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Rule 9.6 Workers Compensation Commission Rules 2010

Part 9 Proceedings commenced other than by application to resolve a dispute

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- (b) the name and address of the person to whom payment is to be made, and
- (c) the amount of payments to be refunded or reimbursed and the time by which payment is to be made, and
- (d) the reasons for which the Commission has determined to issue the order.

### 9.6 Review of order to refund payments

- (1) A person against whom an order is made under section 235D (2) of the 1998 Act may apply for a review of the order by lodging:
  - (a) a copy of the order, and
  - (b) an application for review of the order, which must include the arguments to be put in favour of the application.
- (2) The applicant for a review must serve the application on the Authority on the same day as the application is lodged with the Commission, and is not required to serve a sealed copy of the application.

### 9.7 Workplace injury management plans

- (1) Where a party to a dispute to which Division 3 of Part 5 of Chapter 7 of the 1998 Act applies seeks to have the Registrar deal with the dispute under section 306 of that Act, the party must lodge with the Registrar, and serve on all other parties to the dispute, an application to resolve the workplace injury management dispute.
- (2) Before exercising a power under section 306 of the 1998 Act in respect of a dispute, the Registrar is to contact the parties to the dispute and advise them of the course of action the Registrar proposes to take, and that contact is to be made with a view to resolving the dispute expeditiously.
- (3) A direction by the Registrar that a workplace assessment is to be conducted is to include:
  - (a) the names and addresses of the parties to the dispute, and
  - (b) a statement of the nature of the obligation with which one of the parties is alleged to have failed to comply, and
  - (c) the name of the injury management consultant or other suitably qualified person who is to conduct the workplace assessment, and
  - (d) the amount of, and a note that the employer is liable for, the fee payable for the conduct of the workplace assessment.
- (4) A copy of the direction that a workplace assessment be conducted is to be sent to each of the parties, the insurer (if not a party) and the person who is to conduct the assessment.

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- (5) The injury management consultant or other suitably qualified person who is to conduct the assessment must contact the parties and arrange to carry out the assessment as soon as practicable, but not more than 7 days after receiving the direction.
  - (6) The injury management consultant or other suitably qualified person who is to conduct the assessment must provide the Registrar with a brief written report of the outcome of the assessment, setting out the reasons for any finding, as soon as practicable, but in any case not later than 7 days, after the assessment has been conducted, and the Registrar must make the report available to the parties.
  - (7) A recommendation by the Registrar that a party to a dispute take specified action is to be in writing and must include:
    - (a) the name of the party to whom the recommendation is made, and
    - (b) the nature of the obligation with which one of the parties is alleged to have failed to comply, and
    - (c) the action that the Registrar considers necessary or desirable for the party to take to remedy the failure with which the dispute is concerned, and
    - (d) a note referring the party to whom the recommendation is made to the period for compliance or for requesting referral to the Commission as provided by section 308 of the 1998 Act.
  - (8) A copy of the recommendation issued by the Registrar is to be sent to each of the parties and the insurer (if not a party).

**9.8 Referral to Arbitrator of workplace injury management dispute**

- (1) The Registrar may, on the Registrar's own motion or if the Registrar thinks fit on application by a party (or a party's insurer if not a party), refer a dispute about non-compliance with Chapter 3 of the 1998 Act to an Arbitrator for determination.
- (2) In the event that the employer's insurer is not a party to the proceedings but the insurer's identity is known to the Registrar or readily ascertainable on the face of the documents, the Registrar is to notify the insurer of any such reference.

**9.9 Applications in the case of death of a worker**

- (1) In proceedings for lump sum compensation under section 25 of the 1987 Act, 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,

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Rule 9.10 Workers Compensation Commission Rules 2010

Part 9 Proceedings commenced other than by application to resolve a dispute

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- (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 dependant.
- (2) Part 11 of these Rules applies to an application to join a person or persons in accordance with subrule (1).

### 9.10 Registration of commutation agreements

- (1) In this rule, *commutation agreement* means an agreement referred to in section 87F of the 1987 Act.
- (2) A party to a commutation agreement may apply for registration of the agreement by lodging:
- (a) a copy of the agreement, and
  - (b) an application for registration of the agreement, including evidence that the requirements of section 87F (2) of the 1987 Act have been complied with, and having attached to it the relevant certificate issued by the Authority as referred to in section 87EA (1) of that Act.
- (3) If a commutation agreement for which an application is made for registration is incomplete or otherwise defective, the Registrar may reject the application, and in such case the application may be lodged again after the defect is rectified.

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## **Part 10 Proceedings commenced by application to resolve a dispute**

### **10.1 Application of Part**

This Part applies to proceedings that are commenced by way of an application to resolve a dispute.

### **10.2 Commencement by application to resolve a dispute**

- (1) Subject to these rules, proceedings in relation to a matter under the Workers Compensation Acts are to be commenced by way of an application to resolve a dispute.
- (2) Where an application to resolve a dispute concerns a matter to which Part 9 applies, the Registrar may deal with the matter or dispute in accordance with Part 9, and in such a case the requirement for the respondent to lodge a reply to the application is deferred until such time as the Commission determines.
- (3) Where an application to resolve a dispute concerns:
  - (a) a dispute to which Division 2A of Part 5 of Chapter 7 of the 1998 Act applies, or
  - (b) a dispute requiring assessment of the degree of permanent impairment of a worker,the Registrar may direct that the application be dealt with in accordance with procedures set out in any Practice Direction or WorkCover Guideline issued for that purpose, and if such a direction is given these rules apply to the application as modified to meet the requirements of those procedures.
- (4) The Registrar is not to accept a dispute for referral for determination by the Commission unless:
  - (a) the application to resolve the dispute is accompanied by a certificate by the applicant, or the applicant's legal practitioner or agent, that the dispute is not prevented from being referred for determination by the Commission by the operation of any provision of Part 4 of Chapter 7 of the 1998 Act, and
  - (b) the Registrar is satisfied that the dispute is not so prevented from being referred.
- (5) Within 7 days after the Registrar registers an application to resolve a dispute, the applicant must serve a sealed copy of the application on the respondent and any other party to the proceedings.

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Rule 10.3 Workers Compensation Commission Rules 2010

Part 10 Proceedings commenced by application to resolve a dispute

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- (6) If the respondent is an employer (but not a self-insurer), the applicant must also serve a sealed copy of the application on the employer's insurer.
- (7) Subject to subrule (2), where in respect of an application to resolve a dispute:
  - (a) a respondent has not lodged a reply in accordance with these rules, and
  - (b) the applicant has not lodged a certificate of service certifying service of the application on that respondent in accordance with these rules,the proceedings as against that respondent are deemed to have been struck out, and no further step may be taken in the proceedings unless the proceedings are restored.
- (8) The Commission or Registrar may, on application by a party and on terms, restore any proceedings deemed to have been struck out under subrule (7).

### 10.3 Material to be lodged with application or reply

- (1) For the purposes of section 290 of the 1998 Act, a party to proceedings must lodge and serve with:
  - (a) the application to resolve the dispute, if the party is the applicant, or
  - (b) the reply required by rule 10.4 (1), if the party is a respondent, or
  - (c) the reply required by rule 11.1 (7), if the party is a party joined under rule 11.1 (4),all information and documents on which the party proposes to rely and that are in the possession or control of the party, and that have not been lodged by a party in the current proceedings.
- (2) Subject to subrules (3)–(5), a party may not in proceedings introduce evidence that has not been lodged and served as required by subrule (1) or has not been provided to any other party as required by the 1998 Act or any Regulation or Guideline made under that Act.
- (3) The Commission may, if it is satisfied that it is necessary to do so in the interests of justice, allow a party to introduce evidence that the party would otherwise be prevented from introducing because of the operation of subrule (2).
- (4) Where a party wishes to rely on a document produced as required by a direction issued under rule 13.4 or a notice for production served under

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rule 12.2, or inspected in response to a notice of objection served under rule 12.4 (1) (b) (i), and claims that the party was:

- (a) unaware of the relevant information in the document, or
- (b) unable to obtain possession of the document,

at the time the party lodged the application to resolve the dispute or reply by the party in the proceedings, the party must, as soon as practicable after becoming aware of the information, lodge and serve on all other parties to the proceedings:

- (c) a copy of the document, or
- (d) if the document was inspected in response to a notice of objection served under rule 12.4 (1) (b) (i), a description of the document.

- (5) Without limiting subrule (3), where a party complies with subrule (4) in respect of any information, the Commission may allow the party to introduce evidence of that information.

#### **10.4 Reply by respondent**

- (1) The respondent in any proceedings must, within 21 days from the date of registration of the application to resolve a dispute in the proceedings, lodge a reply to the application and serve a sealed copy of the reply on the applicant and any other party to the proceedings.
- (2) If the applicant is an employer (but not a self-insurer), the respondent must also serve the reply on the employer's insurer.
- (3) Without leave of the Commission, the failure of a worker to notify of an injury as required by the Workers Compensation Acts may not be raised as an issue in the reply by the respondent if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act.

## **2010 No 586**

Rule 11.1 Workers Compensation Commission Rules 2010

Part 11 Joinder of additional parties and disputes

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### **Part 11 Joinder of additional parties and disputes**

#### **11.1 Joining other parties and disputes**

- (1) Proceedings may relate to one or more disputes arising out of a claim or in relation to the same injury (or series of injuries).
- (2) If there is more than one dispute arising out of the same injury (or series of injuries), the Registrar may direct that those disputes be dealt with in the same proceedings.
- (3) Two or more persons can be joined as the applicant or the respondent in any proceedings where:
  - (a) if separate proceedings are brought by or against each of them, some common question of law or fact would arise in all of those proceedings and all rights claimed in those proceedings (whether they are joint, several or alternative) would be in respect of or arise out of the same injury (or series of injuries), or
  - (b) the Commission gives leave to do so.
- (4) If a person who is not a party to any proceedings:
  - (a) should have been joined as a party to the proceedings, or
  - (b) is a person the joining of whom as a party to the proceedings is necessary to ensure that all matters in dispute may be effectually and completely determined,the Registrar, on application by the person or by a party, or on the Registrar's own motion, may order that the person be joined as a party to the proceedings and make such other relevant orders, including orders for amendment, in relation to the proceedings as the Registrar considers appropriate.
- (5) If a person is joined by order under subrule (4) on application by a party, the party must serve on the person:
  - (a) a notice that advises the person of the joinder and of the time within which the person must lodge and serve a reply (14 days after the date of service of the notice), and
  - (b) a copy of any document lodged to commence the proceedings, any document lodged in answer to that document or to any other document lodged in the proceedings, and any information or document required to be lodged and served with any such document, and
  - (c) a copy of a notice to any other person joining that other person as a party to the proceedings.



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- (6) If a person is joined by order under subrule (4) on the person's own application or on the motion of the Registrar, the Registrar is to serve notice of the joinder on the person.
  - (7) Where the proceedings were commenced by way of application to resolve a dispute, the person joined as a party must lodge with the Commission and serve on the applicant and any other party to the proceedings a reply to the application to resolve a dispute within 14 days of being served with notice under subrule (5) or (6).
  - (8) If the person joined is an employer (but not a self-insurer), the notice required by subrule (5) or (6) to be served must also be served on the employer's insurer.
  - (9) Without leave of the Commission, the failure of a worker to notify of an injury as required by the Workers Compensation Acts may not be raised as an issue in the reply by the party joined if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act by the party joined.
  - (10) A party joined who wishes to object to the joinder must include in the party's reply the reasons why the party should not properly be included as a party to the proceedings.
  - (11) No proceedings are rendered invalid by reason only of the joinder of a person in error or by the failure to join a person as a party to those proceedings.

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Rule 12.1 Workers Compensation Commission Rules 2010

Part 12 Notices for production

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## Part 12 Notices for production

### 12.1 Definitions

(1) In this Part:

**document** does not include a document that must be provided to a requesting party by a worker, employer or insurer in respect of a claim for compensation, whether upon request or otherwise, under the Workers Compensation Acts, the *Workers Compensation Regulation 2003* or any related WorkCover Guidelines, except where the worker, employer or insurer has failed to provide the document as and when required under any such provision.

**party to proceedings** includes the insurer of an employer.

**parties** means the requesting party and the producer.

**producer** means a party to proceedings named or proposed to be named in a notice for production.

**requesting party** means a party to proceedings who intends serving or has served a notice for production on a producer.

(2) For the purposes of this Part, a document is taken to be relevant to a fact in issue if it could, or contains material that could, rationally affect the assessment of the probability of the existence of that fact (otherwise than by relating solely to the credibility of a witness), regardless of whether the document would be admissible in evidence.

### 12.2 Notice for production

A requesting party may serve a notice for production on a producer at the producer's address for service requiring the producer to produce for inspection any document that is:

- (a) clearly identified in the notice, and
- (b) relevant to a fact in issue in the proceedings.

### 12.3 Time for service and production

- (1) A notice for production must be served within 21 days from the date of registration of the application to resolve the dispute in the proceedings.
- (2) A notice for production must be complied with within 7 days of service of the notice for production.

### 12.4 Compliance with notice for production

- (1) A producer complies with a notice for production by:
  - (a) delivering to the requesting party, at the requesting party's address for service and within the time required by rule 12.3 (2), copies of such of the documents referred to in the notice as are in

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- the possession or control of the producer and are not the subject of a notice of objection referred to in paragraph (b), and
- (b) serving on the requesting party, at the requesting party's address for service and within the time required by rule 12.3 (2), a notice of objection concerning any document not so delivered stating:
    - (i) that the document is not suitable for copying but may be inspected at a place and time stated in the notice of objection and on a date within 7 days of service of the notice of objection, or such other date as the parties may agree, or
    - (ii) that the document is a privileged document and the reasons for the claim of privilege, or
    - (iii) that the document is not relevant to a fact in issue in the proceedings and the reasons why it is not so relevant, or
    - (iv) any other objection to production and the reasons for the objection, or
    - (v) if the producer is an applicant worker, that sufficient money has not been paid or tendered to meet the reasonable expenses of complying with the notice for production, and the reasons for making this assertion, or
    - (vi) that the document has already been produced to the requesting party, or
    - (vii) that the document is to the best of the producer's knowledge, information or belief in the possession or control of such other person as may be specified in the notice of objection, or
    - (viii) that the producer has no knowledge, information or belief as to the existence or whereabouts of the document.
  - (2) Where a producer has failed to comply with a notice for production:
    - (a) the requesting party may, by notice in writing to the Registrar not later than 2 working days after the time for compliance has expired, request that the Registrar refer the matter to the Authority for consideration as to prosecution of the producer for an offence under section 290 (2) of the 1998 Act, and
    - (b) the Commission may, on application by the requesting party or of its own motion, make such determination as to costs under Division 3 of Part 8 of Chapter 7 of the 1998 Act as the Commission thinks fit.
  - (3) For the avoidance of doubt, it is declared that the Registrar may exercise the Commission's functions referred to in subrule (2) (b) in addition, or in the alternative, to the Registrar's power to make an order under section 290 (6) (c) of the 1998 Act.
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Rule 12.5 Workers Compensation Commission Rules 2010

Part 12 Notices for production

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### 12.5 Opposition to objection

- (1) A requesting party who wishes to oppose a notice of objection referred to in rule 12.4 (1) (b) must lodge and serve written notice of opposition within 2 working days of being served with the notice of objection.
- (2) The written notice referred to in subrule (1) must:
  - (a) set out the reasons for the opposition, and
  - (b) attach a copy of the notice for production and the notice of objection.
- (3) The Arbitrator or Registrar may determine an objection to a notice for production.
- (4) The Arbitrator or Registrar may, following determination of an objection to a notice for production:
  - (a) set aside the notice for production in whole or in part, or
  - (b) direct that the documents the subject of the objection be produced to the requesting party or to the Commission, or
  - (c) make such other order as the Arbitrator or Registrar thinks fit.

### 12.6 Conduct money

- (1) Where the producer is an applicant worker, the producer is not required to comply with the notice for production, other than as required by rule 12.4 (1) (b) (v), unless an amount sufficient to meet the reasonable expenses of complying with the notice is paid or tendered to the producer at the time of service of the notice or not later than a reasonable time before the date for production under rule 12.3 (2).
- (2) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (1) is to be calculated in accordance with any relevant provision of the *Workers Compensation Regulation 2003*.

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## Part 13 Directions for production and summonses

### 13.1 Production of Commission records

- (1) A party to any proceedings (the first proceedings) may request the Registrar, in writing, to produce the Commission's record of any other proceedings:
  - (a) for inspection by the party, or
  - (b) for use as evidence in the first proceedings, or
  - (c) for both such inspection and use.
- (2) The Registrar must comply with a request made in accordance with subrule (1) unless the Registrar is of the opinion that the request is unreasonable.
- (3) This Part, other than this rule, does not apply to the production of records of the Commission.

### 13.2 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.

### 13.3 Request for direction for production

- (1) A party to proceedings may request the Arbitrator to whom the proceedings are referred to order the issue of a direction under section 357 of the 1998 Act for production of documents by a person who is not a party to the proceedings.
- (2) A proposed direction for production must include a proposed first access order.

### 13.4 Direction for production

- (1) Subject to subrule (2), the Arbitrator to whom proceedings are referred may, at any teleconference fixed in the proceedings, or, in a special case and for the avoidance of injustice, subsequently, order or refuse to order the issue of a direction for production requested under rule 13.3 (1).

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Rule 13.5 Workers Compensation Commission Rules 2010

Part 13 Directions for production and summonses

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- (2) A direction for production of documents must not issue where the party requesting the direction is entitled to be provided with the documents, or copies of the documents:
  - (a) pursuant to an obligation imposed upon a worker, employer or insurer in respect of a claim for compensation, whether upon request or otherwise, under the Workers Compensation Acts, the *Workers Compensation Regulation 2003*, or any related WorkCover Guidelines, or
  - (b) pursuant to an obligation arising under Part 7 of the 1987 Act, including under any regulation, guideline, contractual term or procedural arrangement made or arising thereunder, in circumstances where the documents are in the possession or control of the Workers Compensation Nominal Insurer established under section 154A of the 1987 Act, or any agent of that Nominal Insurer.
- (3) In deciding whether to order the issue of the direction for production, the Arbitrator may do any of the following:
  - (a) determine any objection by a party,
  - (b) direct the time for service of the direction and the time for production by the producer,
  - (c) direct the making of access orders, including a first access order,
  - (d) make such other provision as the Arbitrator thinks fit.
- (4) Where the Arbitrator orders the issue of a direction for production, the party who requested the order must engross the direction in accordance with the terms of the order and deliver it to the Registrar, and the Registrar must issue the direction.

### 13.5 Service of direction

- (1) The party who requested an order for a direction for production made by an Arbitrator must serve the direction on the producer and all other parties to the proceedings not later than 7 days before the date for production specified in the direction.
- (2) The mode of service of a direction on a producer is the mode of service required by these rules for service of a document by a party to the proceedings on another party.

### 13.6 Conduct money and expenses

- (1) Subject to subrule (2), a producer is not required to comply with a direction for production unless an amount sufficient to meet the reasonable expenses of compliance is paid or tendered to the producer

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at the time of service of the direction or not later than a reasonable time before the date for production.

- (2) A producer is not excused under subrule (1) from compliance with a direction for production unless the producer objects to production under rule 13.8 and provides in the objection the reasons why the producer asserts that an amount sufficient to meet the reasonable expenses of compliance has not been paid or tendered.
- (3) Where a producer, in consequence of service of the direction, reasonably incurs expense or loss substantially exceeding any amount paid or tendered as referred to in 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.
- (4) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (1) is to be calculated in accordance with any relevant provision of the *Workers Compensation Regulation 2003*.

### 13.7 Compliance

- (1) The producer may produce documents by hand, post, DX, or electronic communication to the address of the Commission stated in the direction for production.
- (2) Unless the direction for production otherwise provides, the producer may comply with the direction for production by producing clear, sharp photocopies of the documents to be produced.
- (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.
- (4) Subject to rule 13.6, where a producer fails to comply with a direction for production, the party who requested the order for the direction may:
  - (a) by oral or written notice to the producer excuse the producer from complying with the direction, or
  - (b) by written notice to the Registrar not later than 7 days after the date for production:
    - (i) request that the terms of the direction be altered,
    - (ii) request an extension of time for compliance with the direction,
    - (iii) request that the matter be referred to the Authority for consideration as to prosecution for an offence under section 357 (3) of the 1998 Act.

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Rule 13.8 Workers Compensation Commission Rules 2010

Part 13 Directions for production and summonses

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### 13.8 Objection by producer

- (1) A producer 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 access to the documents produced under the direction.
- (2) A producer who objects to a direction for production under subrule (1) must notify the Arbitrator or Registrar in writing prior to the date for production.
- (3) An objection to a direction for production made 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 objection is determined.
- (5) The Arbitrator or Registrar must notify the parties to the proceedings of an objection notified 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, within 2 working days of being notified of the objection in accordance with subrule (5).
- (7) The Arbitrator or Registrar may determine an objection to a direction for production solely on the basis of the written objection notified in accordance with subrule (2) and the written opposition lodged in accordance with subrule (6).
- (8) Without limiting subrule (7), when considering an objection to a direction for production the Arbitrator or Registrar may do any of the following:
  - (a) determine the objection,
  - (b) seek further oral or written information from the parties to the proceedings or the producer.
- (9) The Arbitrator or Registrar may set aside or vary the terms of a direction for production following determination of an objection to the direction.
- (10) The Registrar may, on the Registrar's own motion or on the request of any person having sufficient interest, but only if the request is made in accordance with these rules, set aside or vary a direction for production wholly or in part.



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**13.9 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 another party accessing those documents.
- (2) A party who objects under subrule (1) to another party having access must, prior to the expiry of the period contained in the first access order:
  - (a) if any documents in respect of which the objection is made are produced to the Commission by electronic communication, obtain a hard copy of those documents, and
  - (b) separately package and identify the documents in respect of which the objection is made from any other documents that have been produced, and
  - (c) notify the Arbitrator or Registrar and the other parties to the proceedings of the objection in writing clearly identifying the documents in respect of which the objection is made and providing reasons for the objection.
- (3) Where a party has notified an objection in accordance with subrule (2), the other parties to the proceedings may access documents only in accordance with the terms of the objection until the objection is determined.
- (4) A party who wishes to oppose an objection notified in accordance with subrule (2) must, prior to the expiry of the access period for that party, notify the Arbitrator or Registrar and the other parties in writing of the opposition and the reasons for the opposition.
- (5) The Arbitrator or Registrar may determine an objection to access solely on the basis of the written objection notified in accordance with subrule (2) and the written opposition notified in accordance with subrule (4).
- (6) Without limiting subrule (5), when considering an objection to access the Arbitrator or Registrar may do any of the following:
  - (a) determine the objection,
  - (b) seek further oral or written information from the parties to the proceedings or the producer,
  - (c) list the objection for hearing before the Arbitrator or Registrar.
- (7) The Arbitrator or Registrar may vary the terms of a direction for production following determination of an objection to the direction.

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Rule 13.10 Workers Compensation Commission Rules 2010

Part 13 Directions for production and summonses

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### **13.10 Inspection of produced material**

- (1) 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 Arbitrator or Registrar:
  - (a) inspect documents produced in compliance with a direction for production, and
  - (b) make copies of any documents so inspected.
- (2) For the purposes of subrule (1), the Registrar may give directions concerning the removal from and return to the Commission of documents produced in compliance with a direction for production.

### **13.11 Return of documents**

- (1) Unless the Commission otherwise orders:
  - (a) original documents produced to the Commission may be returned to the producer, and
  - (b) copy documents produced to the Commission may be returned to the producer, if so requested, or destroyed, 60 days after expiry of the access period or, where more than one access period has been ordered, access periods in respect of the documents.
- (2) For the avoidance of doubt, it is declared that the Registrar may exercise the Commission's functions under subrule (1).

### **13.12 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.

### **13.13 Summons—issue and service**

- (1) A request by a party for the issue of a summons under section 359 of the 1998 Act in any proceedings is to be made by lodging the summons.
- (2) The Registrar must ensure that the correct date, time and place for the attendance of the person required to attend (the attendee) are specified in the summons, and must then seal and issue the summons.
- (3) The party who requested the issue of the summons must serve the summons on the attendee, and on each other party to the proceedings, not less than 7 days before the date on which the attendee is required to attend.
- (4) Where the party who requested the issue of the summons applies in writing to the Registrar for the abridgment of the time specified in

subrule (3), and provides written reasons for the application, the Registrar may abridge that time if the Registrar is satisfied that:

- (a) the attendee has consented to the abridgment, or
  - (b) the circumstances of the case warrant the abridgment.
- (5) The attendee is not required to comply with a summons unless:
- (a) the summons is served on the attendee in accordance with these rules, and
  - (b) an amount sufficient to meet the reasonable expenses of compliance is paid or tendered to the attendee at the time of service of the summons or not later than a reasonable time before the time at which the attendee is required to attend.
- (6) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (5) (b) is to be calculated in accordance with any relevant provision of the *Workers Compensation Regulation 2003*.
- (7) Where the attendee is not a party to the proceedings and in consequence of the service of the summons incurs expense or loss substantially exceeding any amount paid or tendered as referred to in subrule (5) (b), the Registrar may order that the party who requested the issue of the summons pay to the attendee an additional amount in respect of the expense or loss.

#### **13.14 Summons—variation**

- (1) The Registrar may, on the Registrar's own motion or on the application of any person having sufficient interest, set aside or vary a summons wholly or in part.
- (2) The Registrar may, on written application (including reasons) made, by the party who requested the issue of the summons, on or before the date on which the attendee is required to attend, order that:
  - (a) the attendee be excused from complying with the summons, or
  - (b) the terms of the summons be altered.

#### **13.15 Summons—non-compliance**

Where the attendee has not complied with a summons, the Registrar:

- (a) may, and
- (b) on the application of the party who requested the issue of the summons made not later than 7 days after the date on which the attendee was required to attend, must

refer the matter to the Authority for consideration as to prosecution for an offence under section 359 (2) of the 1998 Act.

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Rule 14.1 Workers Compensation Commission Rules 2010

Part 14 Evidence

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### Part 14 Evidence

#### 14.1 Tapes, films, photographs, etc

- (1) This rule applies to:
  - (a) videotapes, and
  - (b) audiotapes, and
  - (c) films or photographs, and
  - (d) x-ray film, and
  - (e) the results of specialised medical investigations, including computerised tomography, medical ultrasound and magnetic resonance imaging scans, and
  - (f) any documents produced or received by electronic means, on which a party proposes to rely in any proceedings.
- (2) Where a document to which this rule applies constitutes surveillance material, any investigator's report concerning the material:
  - (a) must clearly and unambiguously identify the material, and
  - (b) is, for the purposes of subrule (3), deemed to be part of the document.
- (3) A document to which this rule applies is, subject to this rule, a document for the purposes of rule 10.3.
- (4) In the case of documents referred to in subrule (1) (e):
  - (a) original films or scans are not to be lodged with the Commission, and
  - (b) the lodging and service of a list describing and clearly identifying the films or scans satisfies the lodging and service requirements of rule 10.3, and
  - (c) original films or scans may be taken or delivered to an approved medical specialist undertaking an assessment for the purposes of the relevant proceedings.
- (5) A party who intends to take or deliver original films or scans as referred to in subrule (4) (c) in the course of proceedings must notify the Commission and the other parties to the proceedings by notice in writing, not less than 7 days prior to the taking or delivery, of the party's intention.

**14.2 Calling of witnesses**

- (1) Where a party proposes to rely on the oral evidence of a witness, the party must lodge and serve a document containing:
  - (a) the name of the witness, and
  - (b) a written statement of the evidence to be given by the witness, signed by the witness,with the information and documents required under rule 10.3 to be lodged and served by the party.
- (2) Subject to subrules (3) and (4), a party may not in proceedings call a witness to give oral evidence that has not been included in a document lodged and served as required by subrule (1) unless:
  - (a) the party has lodged and served with the information and documents required under rule 10.3 a statement revealing:
    - (i) the specific nature of the evidence, and
    - (ii) the reliance the party intends to place on the evidence, and
    - (iii) the reasons why the evidence has not been included in a statement as required by subrule (1), and
    - (iv) the time the evidence is expected to be so included, and
  - (b) the evidence is included in a written statement lodged and served on all other parties as soon as practicable after that statement can be obtained.
- (3) Where:
  - (a) a person refuses to sign a statement of the oral evidence to be given in proceedings by the person, and
  - (b) the party wishing to adduce the evidence has served a summons issued under rule 13.13 in respect of the person,this rule does not prevent the party from calling the person to give the evidence.
- (4) The Commission may, for the avoidance of injustice, allow a party to introduce oral evidence that the party would otherwise be prevented from introducing because of the operation of subrule (2).
- (5) Where a party proposes to give oral evidence, this rule applies to the party as though the party were the party's witness as well as being the party.

**14.3 Expert witness**

- (1) Rule 14.2 applies in respect of an expert witness as it applies in respect of any other witness.

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Rule 14.3 Workers Compensation Commission Rules 2010

Part 14 Evidence

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- (2) A party proposing to call a witness to give evidence as an expert witness has a duty to ensure that the witness is aware of and adheres to any Practice Direction in force with respect to expert witnesses.
- (3) Expert evidence that does not comply with any Practice Direction referred to in subrule (2) is not admissible in any proceedings unless the Commission otherwise orders.

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## Part 15 Further provisions regarding proceedings

### 15.1 Procedural orders by Arbitrators

- (1) Where proceedings are referred to an Arbitrator, the Arbitrator may, while the referral continues, make any order relating to the procedure to be followed in the proceedings (including an order striking out the proceedings or any step in the proceedings) that could be made by the Registrar.
- (2) Subrule (1) does not limit any other powers of an Arbitrator.

### 15.2 Principles of procedure

When informing itself on any matter, the Commission is to bear in mind the following principles:

- (a) evidence should be logical and probative,
- (b) evidence should be relevant to the facts in issue and the issues in dispute,
- (c) evidence based on speculation or unsubstantiated assumptions is unacceptable,
- (d) unqualified opinions are unacceptable.

### 15.3 Measures to assist parties

The Commission is to take such measures as are reasonably practicable to:

- (a) assist the parties to any proceedings to understand the nature of the proceedings and the legal implications of any assertion made in any documents or otherwise in the proceedings, and
- (b) explain to the parties any aspect of the procedure or any decision or ruling made by the Commission in relation to the proceedings, and
- (c) ensure that the parties have the fullest opportunity practicable to have their case in the proceedings considered without compromising the objectives of the Commission, and
- (d) ensure that the parties have the opportunity to explore settlement in the proceedings.

### 15.4 Statement as to agreed facts and issues

- (1) The Commission may direct the parties to lodge a joint signed statement setting out the facts and issues on which the parties agree, and the facts and issues that continue to be in dispute.

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Rule 15.5 Workers Compensation Commission Rules 2010

Part 15 Further provisions regarding proceedings

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- (2) The parties are bound by the statement and may not assert the contrary except with the leave of the Commission.
- (3) A direction issued under subrule (1) must, unless the Commission otherwise orders, direct that the joint signed statement be lodged not later than 7 days prior to the next subsequent conference, teleconference or hearing in the proceedings.

### **15.5 Schedule of earnings**

In proceedings in which the quantum of weekly compensation is or may be an issue and there is or may be a dispute in respect of the actual or probable earnings of a worker during any relevant period, the following provisions have effect unless the Commission otherwise orders:

- (a) the applicant must include in the application to resolve the dispute a schedule containing full particulars of those earnings, including where applicable details of the current weekly wage rate as defined in section 42 of the 1987 Act,
- (b) if a party wishes to dispute the accuracy of any matter in the schedule, the party must lodge and serve with the first document lodged and served by the party in the proceedings, in addition to any documents required under rule 10.3 (1) to be lodged and served by the party, a schedule of the party's allegations of the earnings,
- (c) a matter not disputed by a party as provided in paragraph (b) is deemed to be admitted by the party.

### **15.6 Certificates of determination**

- (1) A statement of the Commission's reasons referred to in section 294 (2) of the 1998 Act is to include:
  - (a) the Commission's findings on material questions of fact, referring to the evidence or other material on which those findings were based, and
  - (b) the Commission's understanding of the applicable law, and
  - (c) the reasoning processes that lead the Commission to the conclusions it made.
- (2) Without limiting subrule (1), the reasons set out in a statement referred to in subrule (1) are to be stated sufficiently (in the opinion of the Commission) to make the parties aware of the Commission's view of the case made by each of them.



**15.7 Discontinuance**

- (1) An applicant may discontinue any proceedings, or any part of any proceedings, as against any or all of the other parties to the proceedings, at any time.
- (2) The applicant and any other party to any proceedings may agree to the discontinuance of the proceedings (or any part of the proceedings) as against that other party at any time.
- (3) A discontinuance referred to in subrule (1) or (2) takes effect when a notice of the discontinuance, stating the limits (if any) of the discontinuance, is lodged and served on all parties to the proceedings who are not parties to the discontinuance.
- (4) A party against whom proceedings are discontinued and who has not agreed to the discontinuance may, within 7 days after the discontinuance takes effect, lodge and serve an application to the Commission for an order for payment of the party's costs of the proceedings incurred before the discontinuance.

**15.8 Dismissal for want of due despatch**

Failure by an applicant to prosecute the proceedings with due despatch is a ground of dismissal for the purposes of section 354 (7A) (c) of the 1998 Act.

**15.9 Determination by consent order**

- (1) Where the parties, or some of the parties, to proceedings in respect of a dispute agree as to the terms of an order to be made determining the dispute as between those parties, and that order is an order that the Commission otherwise has power to make, the Commission may determine the dispute as between those parties by making that order.
- (2) An order referred to in subrule (1) may be drawn up, with the consent of each party who has agreed to the order endorsed on it and signed by the party or the party's legal representative or agent in the proceedings, and lodged.
- (3) The Commission may make an order referred to in subrule (1) by signing the order as lodged under subrule (2).

## **2010 No 586**

Rule 16.1 Workers Compensation Commission Rules 2010

Part 16 Referral of questions of law and appeals

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### **Part 16 Referral of questions of law and appeals**

#### **16.1 Referral of question of law**

- (1) A question of law arising in proceedings before the Commission constituted by an Arbitrator may be referred under section 351 of the 1998 Act for the opinion of the Commission constituted by the President only if a certificate of determination has not been issued in respect of the proceedings.
- (2) A party to any proceedings applying for the reference by an Arbitrator of a question of law in the proceedings under section 351 of the 1998 Act must lodge the application and serve it on the Arbitrator, the Authority, and the other parties to the proceedings as soon as practicable.
- (3) An application referred to in subrule (2) must include, or have attached, full details of the question of law and the reasons for seeking its referral, including the reasons why it is alleged that the question involves a novel or complex question of law as referred to in section 351 (3) of the 1998 Act.
- (4) When a party seeks to oppose an application referred to in subrule (2) the party must, within 14 days of being served with the application, lodge and serve on the Arbitrator, the Authority, and the other parties notice of that opposition.
- (5) A notice of opposition must include, or have attached, full details of the reasons for opposing the application.
- (6) Where an application is lodged under subrule (2), and a party wishes to object to the matter of leave to refer the question of law being decided solely on the basis of the written application and any written notice of opposition lodged, the party must state that objection, including the reasons for the objection in full, in the application or notice of opposition lodged by the party.
- (7) Where an Arbitrator, on the application of a party, seeks leave to refer a question of law under section 351 of the 1998 Act, the Arbitrator must give to the Registrar, as soon as practicable and in any case before any certificate of determination is issued in respect of the proceedings:
  - (a) the application served on the Arbitrator under subrule (2), and
  - (b) any notice of opposition served on the Arbitrator under subrule (4), and
  - (c) any statement of the question of law that the Arbitrator wishes to be considered by the President.

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- (8) Where an Arbitrator, of the Arbitrator's own motion, decides to seek leave to refer a question of law under section 351 of the 1998 Act, the Arbitrator must, as soon as practicable, give to the Registrar a notice of that decision including, or having attached, full details of the question of law and the reasons for seeking leave to refer it, including the reasons why it is alleged that the question involves a novel or complex question of law as referred to in subsection (3) of that section.
  - (9) Where an Arbitrator seeks leave to refer a question of law under section 351 of the 1998 Act and decides not to make an award in the matter in which the question arose (as authorised by subsection (5) of that section), the Arbitrator must give to the Registrar a notice of that decision including, or having attached, the reasons for the decision.
  - (10) The Registrar must, as soon as practicable, give to the parties copies of any notice under subrule (8) or (9) received by the Registrar.

#### **16.2 Appeal against Arbitrator's decision**

- (1) A party to any proceedings applying for leave to appeal under section 352 of the 1998 Act against a decision of an Arbitrator must lodge the application within 28 days after the making of the decision, or within such extended time for making the appeal as may be ordered under subrule (11).
- (2) For the purposes of subrule (1), a decision is made, in respect of a dispute, when the Commission issues a certificate as to the determination of the dispute as required by section 294 (1) of the 1998 Act.
- (3) If the Registrar determines that he or she is not satisfied that the requirements of section 352 of the 1998 Act, or any applicable Rules and regulations, as to the making of the appeal have been complied with, the Registrar is to return the application to the party who lodged it, with a statement particularising the non-compliance.
- (4) An application referred to in subrule (1) must have attached to it a copy of the certificate as to the determination of the dispute referred to in subrule (2), and must include, or have attached, full details of:
  - (a) the arguments to be put in favour of review of the decision sought to be appealed against, and
  - (b) for the purposes of section 352 (2) of the 1998 Act, the amount of compensation alleged to be at issue on the appeal, and
  - (c) any new evidence in respect of which leave is to be sought, by the party lodging the application, in accordance with section 352 (6) of the 1998 Act, and

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Rule 16.2 Workers Compensation Commission Rules 2010

Part 16 Referral of questions of law and appeals

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- (d) if the party lodging the application wishes to object to the matter of leave to make the appeal, or the appeal, being decided solely on the basis of the written application and any written notice of opposition lodged, the reasons for the objection,
  - (e) A chronology of events, comprising a list of principal events leading up to the lodging of the appeal, numbered consecutively with a date, a short description of each event, and references to arguments in favour of review.
- (5) The party lodging an application referred to in subrule (1) must serve a sealed copy of the application, including any attachments, on:
- (a) all other parties to the proceedings, and
  - (b) where any of those parties is an employer (but not a self-insurer), the employer's insurer,
- during the period of 14 days commencing on the day on which the Registrar registers the application.
- (6) The appealing party must lodge a certificate of service within 7 days of the date of service, certifying service of the application on the other parties.
- (7) Where a party seeks to oppose an application referred to in subrule (1), or the appeal in respect of which the application is made, the party must, within 28 days of being served with the application, lodge and serve on the other parties notice of that opposition.
- (8) A notice of opposition referred to in subrule (7) must include, or have attached, full details of:
- (a) the arguments to be put against review of the decision sought to be appealed against, and
  - (b) for the purposes of section 352 (2) of the 1998 Act, the amount of compensation alleged to be at issue in the appeal, and
  - (c) any new evidence in respect of which leave is to be sought, by the party lodging the notice, in accordance with section 352 (6) of the 1998 Act, and
  - (d) if the party lodging the notice wishes to object to the matter of leave to make the appeal, or the appeal, being decided solely on the basis of the written application and any notice of opposition lodged, the reasons for the objection.
- (9) The party opposing the application may file an alternative or supplementary chronology of events to that filed by the appealing party in accordance with rule 16.2 (4) (e).

- (10) The party opposing the application must lodge a certificate of service within 7 days of the date of service, certifying service of the notice of opposition on the other parties.
- (11) For the purposes of section 352 (4) of the 1998 Act, an appeal is made when the application for leave to make the appeal is lodged as required by subrule (1).
- (12) The Commission constituted by a Presidential member may, if a party satisfies the Presidential member, in exceptional circumstances, that to lose the right to seek leave to appeal would work demonstrable and substantial injustice, by order extend the time for making an appeal.
- (13) A party who seeks an extension of time as referred to in subrule (12) must:
  - (a) as soon as practicable give notice to the other parties of the intention to seek the extension, and
  - (b) lodge and serve with the application for leave to appeal an application for the extension of time, including full details of the arguments to be put in favour of granting the extension.

## 2010 No 586

Rule 17.1 Workers Compensation Commission Rules 2010

Part 17 Work injury damages

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### Part 17 Work injury damages

#### 17.1 Definitions

In this Part, *claimant* and *defendant* have the meaning given to them by section 311 of the 1998 Act.

#### 17.2 Threshold disputes

- (1) A claimant who seeks assessment of the degree of permanent impairment disputed as referred to in section 313 of the 1998 Act must lodge an application for that assessment.
- (2) An application referred to in subrule (1) must include, or have attached:
  - (a) evidence that a claim has been made on the defendant or insurer in accordance with the relevant WorkCover Guidelines, and that a threshold dispute exists as referred to in section 314 of the 1998 Act, and
  - (b) all documents that the claimant wishes to be considered by the approved medical specialist who is to assess the degree of permanent impairment.
- (3) The claimant must serve an application referred to in subrule (1), including any attachments, on the defendant involved in the threshold dispute within 7 days after the Registrar registers the application.
- (4) The claimant must lodge a certificate of service within 7 days of the date of service, certifying service of the application on the other parties.
- (5) A defendant served with an application referred to in subrule (1) must, within 21 days from the date of registration of the application, lodge and serve on the claimant all documents that the defendant wishes to be considered by the approved medical specialist who is to assess the degree of permanent impairment.

#### 17.3 Pre-filing statement

- (1) For the purposes of section 315 of the 1998 Act, a pre-filing statement is to consist of a copy of the statement of claim intended to be filed in the court of relevant jurisdiction and is to include as attachments the information and other documents required by the Workers Compensation Acts and these rules.
- (2) If the defendant is an employer (but not a self-insurer), the claimant must serve the pre-filing statement on both the employer and the employer's insurer.

**17.4 Material to be served with pre-filing statement**

For the purposes of sections 315 and 318 of the 1998 Act, a claimant for work injury damages must serve with the pre-filing statement all information and documents upon which the claimant proposes to rely including:

- (a) any notification provided to the claimant as required by section 281 (2B) of the 1998 Act that the degree of permanent impairment of the injured worker resulting from the injury is accepted as being sufficient for an award of work injury damages, or
- (b) if the dispute has been referred to an approved medical specialist for assessment of permanent impairment, the medical assessment certificate issued by the approved medical specialist in accordance with section 325 of the 1998 Act.

**17.5 Pre-filing defence**

- (1) In accordance with section 316 of the 1998 Act, a pre-filing defence is to consist of a copy of the defence intended to be filed in the court of relevant jurisdiction and is to include as attachments the information and documents required by the Workers Compensation Acts and these rules.
- (2) Without leave of the Commission, the failure of a worker to notify of an injury as and when required by the Workers Compensation Acts may not be raised as an issue in the pre-filing defence served by the defendant if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act.

**17.6 Material to be served with pre-filing defence**

For the purposes of sections 316 and 318 of the 1998 Act, the defendant must serve with the pre-filing defence all information and documents upon which the defendant proposes to rely.

**17.7 Defective pre-filing statement**

- (1) A claimant who has been notified in accordance with section 317 (1) of the 1998 Act in respect of the claimant's pre-filing statement must, within 7 days of being so notified, serve on the defendant advice as to whether the claimant accepts or denies that the pre-filing statement is defective, and in what detail and to what extent.
- (2) Where a claimant has served advice in accordance with subrule (1) and has not, within 7 days of that service, been notified by the defendant that

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the defendant no longer alleges that the pre-filing statement is defective, the claimant must lodge:

- (a) a copy of the pre-filing statement, and
  - (b) a copy of the defendant's notification and the claimant's advice referred to in subrule (1), and
  - (c) a request that the dispute be referred to the Registrar for determination under section 317 (2) of the 1998 Act, and on the same day serve the request on the defendant.
- (3) Where a claimant does not comply with subrule (1), or, where subrule (2) applies, the pre-filing statement is taken not to have been served.
  - (4) Where a claimant requests in accordance with this rule that a dispute be referred to the Registrar for determination under section 317 (2) of the 1998 Act, and lodges a certificate certifying service of the request on the defendant within 2 working days of that service, the dispute is so referred.
  - (5) Where a dispute is referred for determination in accordance with subrule (4) and the Registrar determines that the pre-filing statement is defective, the pre-filing statement is, in accordance with section 317 (4) of the 1998 Act, considered to have been served on the date of service on the defendant of the last document or information required to cure the defect.
  - (6) Where a dispute is referred for determination in accordance with subrule (4) and the Registrar determines that the pre-filing statement is not defective, the Registrar may direct that the pre-filing statement be considered to have been served on the date when it was in fact served or a subsequent date.
  - (7) Where a defendant has given notification in accordance with section 317 (1) of the 1998 Act and subsequently in respect of the same claim serves a pre-filing defence as referred to in rule 17.5:
    - (a) despite any application of subrule (3), the pre-filing statement is taken to have been served, and
    - (b) the defendant is taken to have waived any objection to the defects alleged in the notification.

### 17.8 Directions for access to information and premises

- (1) A claimant may apply for a direction under section 318I (1) of the 1998 Act by lodging the proposed direction, and the Registrar may give or refuse to give the direction as proposed.



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- (2) Where a direction is given by the Registrar the claimant must serve the direction:
    - (a) on the defendant, and
    - (b) where the direction is a direction to provide or allow access to specified premises and the premises are in the direct control of an agent or representative of the defendant, on the agent or representative,  
at least 28 days before the expiry of the period specified in the direction for compliance with the direction.
  - (3) The claimant must lodge a certificate of service within 7 days of the date of service, certifying service of the direction on the other parties.
  - (4) A defendant may object to a direction by notifying the Registrar and the claimant of the objection in writing, giving the reasons for the objection, before the expiry of the period specified in the direction for compliance with the direction.
  - (5) A defendant who objects to a direction is excused from complying with the direction until the objection is determined.
  - (6) If the claimant wishes to oppose an objection referred to in subrule (4), the claimant must notify the Registrar and the defendant of the opposition in writing, giving the reasons for the opposition, within 2 working days of being notified of the objection.
  - (7) The Registrar must determine an objection notified in accordance with subrule (4), and may do so solely on the basis of the written objection and any written opposition notified in accordance with subrule (6).
  - (8) Without limiting subrule (7), when considering the objection the Registrar may do any of the following:
    - (a) seek further oral or written information from the parties to the proceedings,
    - (b) list the objection for hearing before the Registrar.
  - (9) The Registrar may set aside or vary the terms of a direction following the determination of an objection to the direction.

#### **17.9 Referral for mediation**

- (1) A claimant may apply for the referral of a claim for mediation as mentioned in section 318A of the 1998 Act by lodging:
  - (a) an application for mediation, and
  - (b) a copy of the pre-filing statement served by the claimant as required by section 315 of the 1998 Act, and

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- (c) copies of all information and documents served with the pre-filing statement as required by rule 17.4.
- (2) A claimant who applies to refer a claim for mediation must serve the application on the defendant within 7 days of registration of the application.
- (3) The claimant must lodge a certificate of service within 7 days of the date of service, certifying service of the application on the other parties.
- (4) If the defendant does not lodge a response in accordance with rule 17.10, the claim may not be referred to mediation until the claimant lodges a certificate certifying service of the application for the referral.

### **17.10 Response to application for mediation**

- (1) A defendant served with an application for mediation of a claim as referred to in rule 17.9 must, within 21 days of registration, lodge:
  - (a) a response to the application, and
  - (b) a copy of the pre-filing defence served by the defendant in accordance with section 316 (1) (b) of the 1998 Act, and
  - (c) copies of all information and documents served with the pre-filing defence as required by rule 17.6.
- (2) A response referred to in subrule (1) must indicate whether or not the defendant will decline, under section 318A (3) of the 1998 Act, to participate in mediation of the claim.
- (3) A defendant who lodges a response as required by subrule (1) (a) must serve the response on the claimant within 7 days of lodging the response.

### **17.11 Mediator unable to mediate**

If the mediator to whom a claim is referred by the Registrar is unwilling or unable to act as a mediator in respect of the claim:

- (a) the mediator must notify the Registrar of the unwillingness or inability, in writing, as soon as practicable, and
- (b) the Registrar must then so notify the parties, and
- (c) the Registrar may revoke the direction referring the claim to the mediator and make a direction referring the claim to another mediator.

### **17.12 Certificate of mediation outcome**

- (1) Where a defendant has lodged, under rule 17.10, a response that indicates that the defendant declines to participate in mediation on the

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grounds that the defendant wholly disputes liability in respect of the claim, the Registrar may issue a certificate to that effect.

- (2) A certificate of mediation outcome issued in accordance with section 318B of the 1998 Act is to include:
- (a) the names and addresses of the parties to the dispute, and
  - (b) the names of persons in attendance at the mediation, and
  - (c) a statement that the parties failed to resolve the dispute and reach settlement, and
  - (d) the final offers of settlement made by the parties to the mediation.

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Part 18 Miscellaneous

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### **Part 18 Miscellaneous**

#### **18.1 Practice Directions**

The President, in consultation with the Deputy Presidents, may issue Practice Directions in relation to the operation of these rules, and may from time to time rescind or amend any such Practice Direction.

#### **18.2 Certificate as to amount ordered to be paid**

- (1) A party entitled to recover any amount ordered by the Commission to be paid may apply for a certificate under section 362 of the 1998 Act by lodging a statutory declaration containing and verifying a statement of:
  - (a) the date of the order, and
  - (b) the amount of money originally payable under the order, and
  - (c) the amount of costs originally payable under the order, if that amount has been fixed, and
  - (d) the total amount, if any, paid by the debtor under the order in reduction of the amount payable, and
  - (e) the total amount of any credits accrued in reduction of the amount payable otherwise than by payment, and
  - (f) the amount or amounts on which, and the date or dates from which, the party claims to be entitled to interest in respect of the amount payable, and
  - (g) such other particulars, if any, as are necessary to calculate the balance payable under the order, and
  - (h) the amount payable under the order on the date of making the statutory declaration, and
  - (i) the full name, and the address of the place of residence or business, of the debtor under the order.
- (2) A statutory declaration mentioned in subrule (1) may not be lodged if it is made more than 14 days before the day on which it is submitted for lodging.
- (3) The amount certified by the Registrar must not exceed the amount verified in accordance with subrule (1) (h).

#### **18.3 Interpreters**

- (1) Subject to subrule (2), only interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) may be used in proceedings before the Commission.
- (2) In any proceedings before the Commission requiring interpreters in languages for which interpreters are yet to be accredited by NAATI, or

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in circumstances where the Registrar determines it is otherwise necessary in view of the unavailability of NAATI-accredited interpreters, the Registrar may approve an interpreter or interpreters for use in the proceedings.

**18.4 Continuation of proceedings in the case of death or bankruptcy and substitution of parties**

- (1) If a party dies or becomes bankrupt but a claim in the proceedings survives, the proceedings do not abate by reason of the death or bankruptcy.
- (2) If the interest or liability of a party in respect of any proceedings passes by assignment, transmission, devolution or otherwise to another person, the Commission may make orders for the addition, removal or re-arrangement of parties, and may make orders for the further conduct of the proceedings.
- (3) The Commission may act under subrule (2) on application by a party or by a person to whom the interest or liability passes, or of its own motion.
- (4) If the Commission orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order have effect in relation to the new party as if that party were the old party, unless the Commission otherwise orders.
- (5) An administrator or executor may continue or defend proceedings in like manner as if he or she were a party claiming or defending in his or her own right. If it appears to the Commission that a deceased person was interested, or that the estate of the deceased person is interested, in any matter in question in the proceedings and there is no personal representative, the Commission may appoint a person, with the person's consent, to represent the estate for the purposes of the proceedings.
- (6) In the case of the death of a party, the Commission may order that the proceedings be dismissed if no application has been made for an order under subrule (2).