

WORKERS COMPENSATION COMMISSION RULES

Workplace Injury Management and Workers Compensation Act 1998

Order under section 364

I, Victor Dominello, Minister for Innovation and Better Regulation, pursuant to section 364 of the *Workplace Injury Management and Workers Compensation Act 1998*, do by this my Order amend the *Workers Compensation Commission Rules 2011* in the manner set out in the Schedule hereto.

These amendments take effect on and from 13 November 2015.

VICTOR DOMINELLO

Minister for Innovation and Better Regulation

Amendments to Workers Compensation Commission Rules 2011

Rule	Amendment
Rule 1.3	<p>Subrule 1.3(4) Delete “WorkCover Guideline”. Insert “Workers Compensation Guideline”.</p> <p>Subrule 1.3(5) Delete “WorkCover Guideline”. Insert “Workers Compensation Guideline”.</p>
Rule 1.4	<p>Delete “Authority means WorkCover Authority of New South Wales constituted by section 14 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i>.”</p> <p>Insert: “Authority means the State Insurance Regulatory Authority constituted under the <i>State Insurance and Care Governance Act 2015</i>.”</p>
Rule 8.2(1)	Delete “Claims Branch, WorkCover NSW, Level 4”. Insert “Claims Branch, State Insurance Regulatory Authority”.
Rule 8.2(2)	Delete “WorkCover NSW”. Insert “State Insurance Regulatory Authority”
Part 9 Heading	Delete “other than by application to resolve a dispute”. Insert: “for expedited assessment”.
9.1(1)	Delete “other than by way of an application to resolve a dispute.” Insert: “for expedited assessment.”
Rule 9.1(2)	Delete “WorkCover Guidelines”. Insert “Workers Compensation Guideline”.
Rule 9.2(5)	<p>Delete rule 9.2(5). Insert:</p> <p>“(5) The respondent in any proceedings commenced in accordance with this Part may lodge a reply and serve an unsealed copy of the reply on the applicant no later than 3 working days before the date of the first teleconference set down by the Registrar.”</p>
Rule 9.3(7)	Delete “lead”. Insert “led”
Rule 9.7(5)	<p>Delete rule 9.7(5). Insert:</p> <p>“(5) The respondent in any proceedings commenced in accordance with this Part may lodge a reply and serve an unsealed copy of the reply on the applicant no later than 3 working days before the date of the first teleconference set down by the Registrar.”</p>
Rule 9.8	<p>Insert after rule 9.8(2):</p> <p>“(3) Where a party requests that the Registrar refer a dispute under section 308(1)(b) of the 1998 Act, the request must include reasons for seeking the dispute be referred for determination by the Commission and the reasons for not complying with the recommendation.”</p>
Rule 9.9	Delete rule 9.9

Rule	Amendment
Rule 9.10	Delete rule 9.10
Part 10 Heading	Delete “by application to resolve a dispute”. Insert “other than for expedited assessment”.
Rule 10.1	Delete “by way of application to resolve a dispute”. Insert “other than for expedited assessment”.
Rule 10.2	<p>Delete Rule 10.2 and replace with the following:</p> <p>“(1) The Registrar is not to accept a dispute for referral for determination by the Commission unless:</p> <p>(a) the dispute application is accompanied by a certificate signed 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</p> <p>(b) the Registrar is satisfied that the dispute is not so prevented from being referred.</p> <p>(2) Within 7 days after the Registrar registers a dispute application, the applicant must serve a sealed copy of the application on the respondent and any other party to the proceedings.</p> <p>(3) 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.</p> <p>(4) Where in respect of a dispute application:</p> <p>(a) a respondent has not lodged a reply in accordance with these rules, and</p> <p>(b) the applicant has not lodged a certificate of service certifying service of the application on that respondent in accordance with these rules,</p> <p>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.</p> <p>(5) The Commission or Registrar may, on application by a party and on terms, restore any proceedings deemed to have been struck out under subrule (4).”</p>
Rule 10.3 Heading	Delete “with application or reply”. Insert “in proceedings”
Rule 10.3	<p>Delete subrule 10.3(1). Insert:</p> <p>“(1) For the purposes of section 290 of the 1998 Act, a party to proceedings must lodge and serve, with the dispute application or reply, 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 and:</p> <p>(a) where the proceedings are commenced by a worker, a written statement of the evidence to be given by the worker, signed by the worker; and</p> <p>(b) where the proceedings include a claim for weekly payments of compensation, a schedule of all weekly payments of compensation paid including the amounts and periods.”</p>
Rule 10.3	Delete subrules 10.3(2) to (5). Insert:

Rule	Amendment
	<p>“(2) Subject to subrules (3)–(4), a party may not 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 Workers Compensation Guideline made under that Act.</p> <p>(3) where a party wishes to rely on a document not lodged and served in compliance with section 290 of the 1998 Act and subrule (1), the party must:</p> <p>(a) as soon as practicable after becoming aware of the document or obtaining possession of the document, serve a copy on all other parties; and</p> <p>(b) not later than 5 working days prior to a medical assessment or telephone conference, on one occasion only and by the approved form, lodge all documents not previously lodged; and</p> <p>(c) not later than 5 working days prior to an arbitration hearing, on one occasion only and by the approved form, lodge all documents not previously lodged.</p> <p>(4) 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) provided the party complies with subrule (3) or the Commission gives the party leave to lodge additional documents.”</p>
Rule 10.5	<p>Insert:</p> <p>“10.5 Applications in the case of death of a worker</p> <p>(1) In proceedings for lump sum compensation under section 25 of the 1987 Act, the following persons shall be joined as respondents:</p> <p>(a) the personal representative (if any) of the worker, if that personal representative is not already an applicant,</p> <p>(b) if the proceedings are brought by or on behalf of only some of the dependants, the other dependants, and</p> <p>(c) any other person claiming to be a dependant.</p> <p>(2) Part 11 of these Rules applies to an application to join a person or persons in accordance with subrule (1).”</p>
Rule 10.6	<p>Insert:</p> <p>“10.6 Registration of commutation agreements</p> <p>(1) In this rule, commutation agreement means an agreement referred to in section 87F of the 1987 Act.</p> <p>(2) A party to a commutation agreement may apply for registration of the agreement by lodging:</p> <p>(a) a copy of the agreement, and</p> <p>(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.</p> <p>(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.”</p>
Rule 12.1	<p>Delete “WorkCover Guidelines”. Insert “Workers Compensation Guideline”.</p>

Rule	Amendment
Rule 13.4(2)	<p>In 13.4(2)(a) Delete “WorkCover Guidelines”. Insert “Workers Compensation Guideline”.</p> <p>In 13.4(2)(b) Delete “established under section 154A of the 1987 Act”</p> <p>Insert after rule 13.4(2)(b):</p> <p>“, or</p> <p>(c) pursuant to any authority a worker has provided to the employer or insurer to obtain documents from a third party, unless there has been a failure to comply with a request by a third party, or special reasons prevented the employer or insurer from acting on that authority.”</p>
Rule 15.5	<p>After rule 15.5(1), insert new subrule (2):</p> <p>“(2) In respect of ‘pre-injury average weekly earnings’, the particulars of such earnings should specify the relevant figures from time to time, having regard to the matters specified in sections 44C, 44D, 44E, 44F, 44G, 44H and 44I of the 1987 Act.”</p> <p>Renumber the existing subrules (2) and (3) to subrules (3) and (4) respectively.</p> <p>In subrule (4), Delete “(2)”. Insert “(3)”</p>
Rule 15.6(1)(c)	<p>Delete “lead”. Insert “led”.</p>
Rule 16.2(5)	<p>Delete “14 days”. Insert “7 days”:</p>
Rule 17.2(2)(a)	<p>Delete “WorkCover Guidelines”. Insert “Workers Compensation Guideline”.</p>
Rule 17.7(3) and (4)	<p>17.7(3) Delete “2 working days”. Insert “7 days”.</p> <p>17.7(4) Delete “7 days”. Insert “14 days”.</p>
Rule 17.8(6)	<p>Delete “2 working days”. Insert “7 days”.</p>
Rule 18.4(5)	<p>Delete rule 18.4(5). Insert:</p> <p>“(5) An administrator or executor of an estate of a deceased person 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 the administrator or executor of the estate duly appointed by the Supreme Court, with the person’s consent, to represent the estate for the purposes of the proceedings.”</p>