

## **WORKERS COMPENSATION COMMISSION RULES**

*Workplace Injury Management and Workers Compensation Act 1998*

### **Order under section 364**

I, the Hon. Victor Dominello MP, Minister for Customer Service, 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 1 January 2020.

VICTOR DOMINELLO, MP

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Minister for Customer Service

**Schedule to Order under Section 364  
2019 amendment to Workers Compensation Commission Rules 2011**

<b>Rule</b>	<b>Amendment</b>
1.4	<p><b>Definitions</b></p> <p><b>Delete from rule 1.4 the definition:</b>  “<b>electronic communication</b> has the meaning in these rules as it is given in the <a href="#">Electronic Transactions Act 2000</a>.”</p> <p><b>and replace with:</b>  “<b>ECM system</b> means the Commission’s electronic case management system.”</p> <p><b>Amended rule 1.4 to include:</b></p> <p><b>ECM system</b> means the Commission’s electronic case management system.</p>
2.2(1)	<p><b>Location of Registry</b></p> <p><b>Delete from subrule 2.2(1)(b)(iv) the words:</b>  “electronic communication” and “and”</p> <p><b>Insert subrule 2.2(1)(b)(v):</b>  by ECM system:  as notified on the Commission’s website at <a href="http://www.wcc.nsw.gov.au">www.wcc.nsw.gov.au</a></p> <p><b>Amended rule 2.2(1) to read:</b></p> <p><b>2.2 Location of registry</b>  (1) The address of the registry is:  (a) for the purpose of delivery of documents:  As notified on the Commission’s website, at <a href="http://www.wcc.nsw.gov.au">www.wcc.nsw.gov.au</a>  (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 email:  <a href="mailto:registry@wcc.nsw.gov.au">registry@wcc.nsw.gov.au</a>  (v) by ECM system:  as notified on the Commission’s website at <a href="http://www.wcc.nsw.gov.au">www.wcc.nsw.gov.au</a></p>
2.4(2)	<p><b>Registers</b></p> <p><b>Delete from subrule 2.4(2):</b>  “http://”</p> <p><b>Amended subrule 2.4(2) to read:</b></p>

	<p>(2)The registers referred to in subrule (1) are to be available for inspection by the general public on the Commission’s website at <a href="http://www.wcc.nsw.gov.au">www.wcc.nsw.gov.au</a> or in such other manner and at such times as are determined by the Registrar from time to time.</p>
3.2(1)	<p><b>Extension and abridgment of time</b></p> <p><b>Delete from subrule 3.2(2):</b> “16.2(12)”</p> <p><b>And replace with:</b> “16.2(5)”</p> <p><b>Amended subrule 3.2(2) to read:</b></p> <p>(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, except the extension of time fixed under section 352(4) of the 1998 Act, which must be made under rule 16.2(5).</p>
4.1	<p><b>Form of Documents</b></p> <p><b>Delete from subrule 4.1(2):</b> “http://”</p> <p><b>Delete from subrule 4.1(3) the words:</b> “Every document”</p> <p><b>And replace with the word:</b> “Documents”</p> <p><b>Delete the whole of subrule 4.1(4):</b> “(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.”</p> <p><b>Delete the whole of subrule 4.1(7):</b> “(7) Without limiting subrule (6), the Registrar may refuse to register an incomplete or otherwise defective document lodged for the commencement of proceedings, including commencement of appeal proceedings.”</p> <p><b>Delete from subrule 4.1(8):</b> “(7)”</p> <p><b>and replace with:</b> “(5)”</p> <p><b>And renumber 4.1(5) as subrule 4.1(4)</b></p> <p><b>And renumber 4.1(6) as subrule 4.1(5)</b></p> <p><b>And renumber 4.1(8) as subrule 4.1(6)</b></p> <p><b>Amended subrule 4.1 to read</b></p> <p><b>4.1 Form of documents</b></p>

	<p>(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.</p> <p>(2) The Registrar may cause the approved forms to be published on the Commission’s website at <a href="http://www.wcc.nsw.gov.au">www.wcc.nsw.gov.au</a>.</p> <p>(3) Documents lodged at or served on the registry must:</p> <p>(a) be headed so as to identify clearly the proceedings to which the document relates and the nature and purpose of the document, and</p> <p>(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</p> <p>(c) be clearly written, typed or reproduced.</p> <p>(4) 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.</p> <p>(5) The Registrar may refuse to accept, seal, or issue any document that, in the opinion of the Registrar, contravenes this rule.</p> <p>(6) Where the Registrar has refused to register a document as referred to in subrule (5), a new document may be lodged to replace that document, however time continues to run in respect of any proceedings.</p>
5.1	<p><b>Definition</b></p> <p><b>Delete the whole of rule 5.1</b>      “In this Part-  <b>ECM system</b> means the Commission’s electronic case management system”</p> <p><b>Amended rule 5.1 to read:</b></p> <p>5.1 (Repealed)</p>
5.3(4)	<p><b>Electronic lodging of documents</b></p> <p><b>Delete from subrule 5.3(4):</b>      “4.1(6) or (7)”</p> <p><b>and replace with:</b>      “4.1(5)”</p> <p><b>Amended subrule 5.3(4) to read:</b></p> <p>(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(5).</p>
8.1	<p><b>Service of documents by or on Commission and lodging documents</b></p> <p><b>Delete from subrule 8.1(2) the words:</b>      “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.”</p> <p><b>Insert into subrule 8.1(2) after the words “subrule(3)”:</b>      “all documents are to be lodged with, or issued or served by, the Commission using the ECM system.”</p> <p><b>Delete the whole of subrule 8.1(3) and (4):</b></p>

- (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.

**and replace with:**

- (3) The Registrar may direct that a document, or documents of a class, can or cannot be lodged with or served on 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 email, by sending the document or correspondence to the email address set out in or varied under rule 2.2.
- (4) A document that is lodged with or served on the Commission and correspondence directed to the Commission by ECM system or email is received by the Commission at the time of entering the information system at the Commission 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.

**Delete from subrule 8.1(5) the words:**

“Except as provided by subrule (6), a”

**and replace with:**

“A”

**Delete the whole of rule 8.1(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 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.”

**and replace with:**

“A document that is served by the Commission and correspondence forwarded by the Commission by ECM system or email 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.”

**Delete the words from subrule 8.1(7):**

“Except as provided by subrule (8), a”

**and replace with:**

“A”

**Insert into subrule 8.1(7)(b) after the word “seventh”:**

“business”

**Delete the whole of subrules 8.1(8) and (9):**

(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.

**And renumber 8.1(10) to 8.1(8)**

**Amended rule 8.1 to read**

### **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), all documents are to be lodged with, or issued or served by, the Commission using the ECM system.

(3) The Registrar may direct that a document, or documents of a class, can or cannot be lodged with or served on 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 email, by sending the document or correspondence to the email address set out in or varied under rule 2.2.

(4) A document that is lodged with or served on the Commission and correspondence directed to the Commission by ECM system or email is received by the Commission at the time of entering the information system at the Commission 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.

(5) A document lodged with or served on the Commission and correspondence directed to the Commission is received by the Commission:

(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 transmission machine of notification of a successful transmission),

provided the document or correspondence is

received by 4:30pm New South Wales standard time or New South Wales summer time on any day. If the document or correspondence is received after 4:30pm on any day, or is received on a Saturday, Sunday or public holiday, it is received on the next day that is not a Saturday, Sunday or public holiday.

	<p>(6) A document that is served by the Commission and correspondence forwarded by the Commission by ECM system or email 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.</p> <p>(7) A document served by the Commission and correspondence forwarded by the Commission is received:</p> <p>(a) if by hand, on the day of delivery,</p> <p>(b) if by post, on the seventh business day after the day of sending by prepaid post,</p> <p>(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</p> <p>(d) if by fax, on the day of transmission (subject to receipt on the sending facsimile transmission machine of notification of a successful transmission), provided the document or correspondence is received by 4:30pm New South Wales standard time or New South Wales summer time on any day. If the document or correspondence is received after 4:30pm on any day, or is received on a Saturday, Sunday or public holiday, it is received on the next day that is not a Saturday, Sunday or public holiday.</p> <p>(8) This rule applies subject to the <a href="#">Service and Execution of Process Act 1992</a> or any order or direction issued by the Commission or Registrar.</p>
8.2	<p><b>Service on Authority</b></p> <p><b>Delete from subrule 8.2(1) the words:</b>  “at the office of the Authority at” and “Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority 92–100 Donnison Street Gosford NSW 2250”</p> <p><b>and replace with:</b>  “(a) by email: litigation@sira.nsw.gov.au  (b) by hand, by delivering to:  Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority 92–100 Donnison Street Gosford NSW 2250  (c) by post, by sending it by prepaid post to:  Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority Locked Bag 2906 Lisarow NSW 2252.”</p> <p><b>Delete the whole of subrule 8.2(2):</b>  “(2) Service of a document may be effected at the office of the Authority— (a) by hand, by delivering it to the address set out in subrule (1), or (b) by post, by sending it by prepaid post to— Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority Locked Bag 2906 Lisarow NSW 2252.”</p> <p><b>Amended rule 8.2 to read:</b></p> <p><b>Service on Authority</b>  (1) Where these rules require service on the Authority, that service is to be effected-  (a) by email: litigation@sira.nsw.gov.au  (b) by hand, by delivering to:  Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority 92–100 Donnison Street Gosford NSW 2250  (c) by post, by sending it by prepaid post to:</p>

	<p>Executive Office—Workers &amp; Home Building Compensation Regulation State Insurance Regulatory Authority Locked Bag 2906 Lisarow NSW 2252. (2) repealed.</p>
8.3	<p><b>Address for Service</b></p> <p><b>Delete the whole of subrule 8.3(1):</b> “(1) 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.”</p> <p><b>and replace with:</b> “(1) An application or reply lodged with the Commission must contain an address for service in respect of the person or body lodging the document.”</p> <p><b>Delete the whole of subrule 8.3(2):</b> (2) A respondent’s address provided by the applicant 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.</p> <p><b>and replace with:</b> “(2) A party’s address for service is to be an email address but where email is not available may be or include a postal address, document exchange (DX) box, fax number, or a physical address.”</p> <p><b>Delete the whole of subrule 8.3(3)</b> “(3) 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.”</p> <p><b>And renumber subrule 8.3(4) as subrule 8.3(3)</b></p> <p><b>And renumber subrule 8.3(5) as subrule 8.3(4)</b></p> <p><b>Amended rule 8.3 to read:</b></p> <p><b>8.3 Address for service</b> (1) An application or reply lodged with the Commission must contain an address for service in respect of the person or body lodging the document. (2) A party’s address for service is to be an email address but where email is not available may be or include a postal address, document exchange (DX) box, fax number, or a physical address. (3) A party may give its address for service as care of its legal representative or agent. (4) 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.</p>
8.4	<p><b>Service at address for service</b></p> <p><b>Delete the heading of rule 8.4:</b> “Service at address for service”</p>



	<p><b>and replace with:</b>  “When service is effected”</p> <p><b>Insert new subrule 8.4(2)(a)</b></p> <p>“(a) if by email, at the time of entering the information system addressed to the email address set out in the address for service,”</p> <p><b>Insert into subrule 8.4(2)(b) after the word “seventh”:</b></p> <p>“business”</p> <p><b>Delete from subrule 8.4(2)(d) the word:</b>  “or”</p> <p><b>and add:</b>  “.”</p> <p><b>And renumber subrule 8.4(2)(a) as subrule 8.4(2)(b)</b></p> <p><b>And renumber subrule 8.4(2)(b) as subrule 8.4(2)(c)</b></p> <p><b>And renumber subrule 8.4(2)(c) as subrule 8.4(2)(d)</b></p> <p><b>And renumber subrule 8.4(2)(d) as subrule 8.4(2)(e)</b></p> <p><b>Amended subrule 8.4 (2) to read:</b></p> <p><b>8.4 When service is effected</b></p> <p>(1) ...</p> <p>(2) Service of a document by a party on another party is taken to be effected if received by 5pm:</p> <p>(a) if by email, at the time of entering the information system addressed to the email address set out in the address for service,</p> <p>(b) if by hand, on the day of delivery,</p> <p>(c) if by post, on the seventh business day after the day of sending by prepaid post,</p> <p>(d) 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,</p> <p>(e) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of a notification of a successful transmission).</p> <p>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.</p>
8.5	<p><b>Sealed copies of documents</b></p> <p><b>Delete subrules 8.5(1) and (2):</b></p> <p>“(1) 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</p> <p>(2) on registering the document, the Registrar must seal any copies of the document tendered as required by paragraph (a) and return other additional copies to the party, and”</p> <p><b>and replace with new subrule 8.5(1):</b>  “on registering the document, the Registrar must seal the document and return it to the party, and”</p>

	<p><b>And renumber subrule 8.5(3) as subrule 8.5(2)</b></p> <p><b>Amended rule 8.5 to read:</b></p> <p><b>8.5 Sealed copies of documents</b> Where a party is required to serve a sealed copy of a document— (1) on registering the document, the Registrar must seal the document and return it to the party, and (2) 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.</p>
13.7(1)	<p><b>Compliance</b></p> <p><b>Delete from subrule 13.7(1) the words:</b> “electronic communication”</p> <p><b>and replace with:</b> “email”</p> <p><b>Amended subrule 13.7(1) to read:</b></p> <p>(1) The producer may produce documents by hand, post, DX, or email to the address of the Commission, stated in the direction for production.</p>
13.9(2)	<p><b>Objection after production by a party entitled to first access</b></p> <p><b>Insert into subrule 13.9(2) after the word “order”:</b> “, notify the 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 objections.”</p> <p><b>Delete from subrule 13.9(2):</b> “—”</p> <p><b>Delete subrule 13.9(2)(a)</b></p> <p><b>Delete subrule 13.9(2)(b)</b></p> <p><b>Delete subrule 13.9(2)(c)</b></p> <p><b>Amended 13.9(2) to read:</b></p> <p>(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, notify the 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 objections.</p>
15.5	<p><b>Schedule of Earnings</b></p> <p><b>Delete the words:</b></p>

“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:”

**and replace with:**

“If the amount of weekly compensation is in dispute:”

**Delete subrule 15.5(1):**

“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, as in force before 1 October 2012,”

**and replace with:**

“the applicant must include in the application to resolve the dispute a schedule of earnings containing full particulars of the amount claimed,”

**Delete subrule 15.5(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”

**Insert into subrule 15.5(3) after the word “schedule” the words:**

“of earnings”

**Insert into subrule 15.5(3) after the second reference to “schedule” the words:**

“of earnings containing full particulars”

**Delete from subrule 15.5(4) the number:**

“3”

**and replace with the number:**

“2”

**Renumber subrule 15.5(3) as subrule 15.5(2)**

**Renumber subrule 15.5(4) as subrule 15.5(3)**

**Amended rule 15.5 to read:**

**15.5 Schedule of Earnings**

If the amount of weekly compensation is in dispute:

- (1) the applicant must include in the application to resolve the dispute a schedule of earnings containing full particulars of the amount claimed,
- (2) if a party wishes to dispute the accuracy of any matter in the schedule of earnings, 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 earnings containing full particulars of the party’s allegations of the earnings,
- (3) a matter not disputed by a party as provided in subrule (2) is deemed to be admitted by the party.