



New South Wales

Personal Injury Commission (Amendment No 1) Rule 2022

under the

Personal Injury Commission Act 2020

The Personal Injury Commission Rule Committee has made the following rule of court under the *Personal Injury Commission Act 2020*.

SIOBHAN FLORES-WALSH
Secretary of the Rule Committee

Explanatory note

The object of this Rule is to amend the *Personal Injury Commission Rules 2021* to—

- (a) update requirements relating to the lodgment of documents and surveillance recordings, and
- (b) specify the procedure for determining an extension of the time within which specified applications under certain Acts may be made, and
- (c) make other minor and miscellaneous updates.

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1 Name of Rule

This Rule is the *Personal Injury Commission (Amendment No 1) Rule 2022*.

2 Commencement

This Rule commences on 29 April 2022 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Personal Injury Commission Rules 2021

[1] Rule 49 Compliance with direction for production

Omit rule 49(3)(b)(iii) and (iv). Insert instead—

- (iii) request that the matter be referred to the Authority for consideration of the prosecution of an offence under the PIC Act, section 49(3).

[2] Rule 67 Material to be lodged in applicable proceedings

Omit “medical assessment or” from rule 67(3)(b).

[3] Rule 67(3)(d)

Insert at the end of rule 67(3)(c)—

, and

- (d) not later than 14 working days before a medical assessment, on one occasion only and by the approved form, lodge all documents not previously lodged.

[4] Rule 67(4)(b)

Insert “following an attempt by the party, whether or not successful, to obtain consent to the lodgment from all parties to the proceedings” after “additional documents”.

[5] Rule 67(5)

Omit the subrule.

[6] Rule 69 Fixing of time for applicable proceedings

Omit “, except the extension of time fixed under section 352(4) of the 1998 Act” from rule 69(2)(b).

[7] Rule 97 Persons under legal incapacity

Omit rule 97(2), definition of *claimant who is a person under legal incapacity*.

Insert in alphabetical order—

person under legal incapacity has the same meaning as in the MAI Act.

[8] Rule 105 Application for assessment of medical dispute

Omit rule 105(1)(a) and (b). Insert instead—

- (a) for a dispute about a decision of an insurer, as soon as practicable after—
 - (i) the insurer notifies the claimant of the outcome of the insurer’s internal review of the reviewable decision or the insurer’s decision to decline to conduct a review, or
 - (ii) the date by which the insurer was to complete an internal review and notify the claimant of the outcome, where the insurer has failed to do so within the required period, or
- (b) for a dispute other than a dispute about a decision of an insurer—at any time.

[9] Rule 106 Service of applications and replies

Omit “14 days” from rule 106(3)(c). Insert instead “21 days”.

[10] Rule 109 Surveillance recordings

Omit rule 109(1) and (2). Insert instead—

- (1) A surveillance recording may not be referred to a medical assessor in medical assessment proceedings for the purposes of the enabling legislation unless—
 - (a) exceptional circumstances exist, as determined by the Commission or the President, and
 - (b) the Commission or the President orders that the surveillance recording may be referred.
- (2) A party who wishes to lodge a surveillance recording for referral must—
 - (a) lodge the recording with the application or reply lodged by the party in accordance with subrule (2A), and
 - (b) serve the entire recording on the other parties, including material from the recording that is not lodged.
- (2A) When lodging the surveillance recording, the party must—
 - (a) lodge only the material from the surveillance recording that is relevant to the issues in the proceedings, and
 - (b) accompany the material with—
 - (i) a description of other surveillance recording material in the party’s custody or control, and
 - (ii) the reason the other material is not relevant to the issues in the proceedings.

[11] Rule 109(4)

Insert after rule 109(3)—

- (4) If a party wishes to submit a surveillance recording but has not complied with subrule (2)—
 - (a) rule 67(4) applies, and
 - (b) for the purpose of applying rule 67(4), the party’s failure to comply is taken to be a failure to comply with rule 67(1).

[12] Rule 114 Application of Part 5 of PIC Act

Insert after rule 114(1)(c)—

- (ca) section 47 (Intervention by Authority),

[13] Rule 114(3A)

Insert after rule 114(3)—

- (3A) A reference to the Commission in the PIC Act, section 47 is taken to be a reference to the merit reviewer conducting the merit review proceedings.

[14] Rule 123 Application for workers compensation dispute appeal

Insert after rule 123(1)(b)(iii)—

Note— Rule 133A makes further provision about the procedure for compliance with the 1998 Act, section 352(4)(b).

[15] Rule 127 Application of Part 5 of PIC Act

Insert after rule 127(1)(c)—

- (ca) section 47 (Intervention by Authority),

[16] Rule 127(3A)

Insert after rule 127(3)—

- (3A) A reference to the Commission in the PIC Act, section 47 is taken to be a reference to the panel conducting the panel review proceedings.

[17] Rule 129 Applications for appeals and reviews

Insert after rule 129(2)—

Note— Rule 133A makes further provision about the time by which an application referred to in subrule (1)(b)–(d) must be lodged.

[18] Rule 133A

Insert after rule 133—

133A Extension of time for making certain applications

- (1) This rule specifies the procedure for determining a period of time, longer than the statutory period, within which 1 of the following (a *relevant application*) may be made—
- (a) an appeal under the 1998 Act, section 352,
 - (b) an application under the MAC Act, section 63,
 - (c) an application under the MAI Act, section 7.15,
 - (d) an application under the MAI Act, section 7.26.
- Note—** The listed provisions specify that a relevant application must be made within the statutory period or a longer period determined or allowed in accordance with these Rules.
- (2) A party seeking to make a relevant application after the end of the statutory period may make an additional application (an *extension application*) for an order determining a longer period within which the party may make the relevant application.
- (3) An extension application—
- (a) must be made at the same time as the relevant application to which it relates, and
 - (b) must be in the approved form, and
 - (c) must include full details of the arguments relied on in favour of granting the order, and
 - (d) is taken to form part of the relevant application for the purposes of the requirements relating to service under rules 123 and 129.
- (4) The extension application must be decided by the following (the *decision-maker*)—
- (a) for an appeal under the 1998 Act, section 352—a presidential member,
 - (b) otherwise—the President.
- (5) The decision-maker may make the order if satisfied by the party making the extension application, in exceptional circumstances, that to lose the right to make the relevant application would work demonstrable and substantial injustice.

- (6) In this rule—
- statutory period*** means—
- (a) for the 1998 Act—the period specified in section 352(4)(a), and
 - (b) for the MAC Act—the period specified in section 63(7)(a), and
 - (c) for the MAI Act—the period specified in section 7.15(6)(a) or 7.26(10)(a).