

# Interim Workers Compensation Commission Rules 2001

[2001-1035]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
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### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Interim Workers Compensation Commission Rules 2001



New South Wales

I John Della Bosca, Special Minister of State, 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*.

JOHN DELLA BOSCA, M.L.C., Special Minister of State.

## Part 1 Preliminary

### 1 Name of Rules

These rules are the *Interim Workers Compensation Commission Rules 2001*.

### 2 Commencement

These rules commence on 1 January 2002.

### 3 Interpretation

(1) In these rules:

**approved medical specialist** means a medical practitioner appointed under Part 7 of Chapter 7 of the 1998 Act as an approved medical specialist.

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

**electronic communication** means:

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both, or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

**party** means a party to proceedings before a mediator or the Commission.

**proceedings** means proceedings before a mediator or the Commission.

**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) 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.
- (3) When these rules provide for notice to be given, that notice is to be given in writing unless otherwise specified. Notice in writing includes notice given by electronic communication in accordance with the Rules.
- (4) A reference in these rules to the Commission includes a reference to the Registrar or any other member of the Commission, as the context requires.
- (5) A reference in these rules to a section of a particular number is, unless otherwise indicated, to be read as a reference to the section of that number of the 1998 Act.

#### **4 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 Act, or the person is in doubt as to the manner or form of procedure, the Commission may, on application by the person in the approved form, 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.

#### **5 Adherence to and relief from rules**

- (1) Subject to subrule (2) and to rule 4, 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 Acts 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.

## **Part 2 Administration**

### **6 Establishment of Registry**

The Commission is to establish and maintain a Registry.

### **7 Location of Registry**

- (1) For the purpose of delivery of documents the address of the Registry is:

Workers Compensation Commission Registry  
Level 21, 1 Oxford Street  
Darlinghurst NSW 2010

- (2) For the purpose of sending documents or correspondence the address of the Registry is:

By Post:

The Registrar  
Workers Compensation Commission Registry  
PO Box 594, Darlinghurst NSW 2010

By Document Exchange (DX):

The Registrar  
Workers Compensation Commission Registry  
DX 11524 Sydney Downtown

By facsimile transmission:

The Registrar  
Workers Compensation Commission Registry  
(02) 92438801

By email (electronic communication):

Via the website <http://www.wcc.nsw.gov.au>

## **8 Hours of business**

Except on Saturdays, Sundays and other public holidays or days on which public offices are closed, the Registry is to be open to the public for business between 8:30 am and 4:00 pm or at such times and on such days as the Registrar directs from time to time.

## **9 Service of documents**

- (1) All documents required or permitted to be filed or lodged in or with or issued by, the Commission, must be filed or lodged at the Registry or issued from the Registry of the Commission.
- (2) Filing or lodging of documents with, or issuing of documents by, the Commission may be by means of hand delivery, post, document exchange, facsimile transmission or electronic communication in accordance with these rules and the Workers Compensation Acts.
- (3) It is sufficient notification or service of any document or correspondence directed to the Commission:
  - (a) by hand, by delivering it to the Commission at the address of the Commission set out in rule 7,
  - (b) by post, by sending by prepaid post to the postal address set out in rule 7,
  - (c) by DX, by leaving in the DX box set out in rule 7 or in another DX box for transmission to that exchange box,
  - (d) by fax, by faxing to the fax number set out in rule 7 and receiving notification on the sending facsimile machine of a successful transmission,
  - (e) by electronic communication, by sending an electronic communication to the email address set out in rule 7.
- (4) Notification or service of any document or correspondence directed to the Registry or the Commission is taken to have been effected:
  - (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 at the sending fax of notification of a successful transmission), or
  - (e) if by electronic communication, at the time of entering the information system addressed to the party's email address as provided by the *Electronic Transactions*



*Act 2000.*

- (5) Notification or service of any document or correspondence issued by the Registry or the Commission is taken to have been effected:
  - (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 at the sending fax of notification of a successful transmission), or
  - (e) if by electronic communication, at the time of entering the information system addressed to the party's email address as provided by the *Electronic Transactions Act 2000*.
- (6) Notification or service of any document or correspondence to a party by electronic communication may be made only where the party gives as part of its address for service an email address.

## **10 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) Every document lodged at or served on the Registry must:
  - (a) be in the approved form and otherwise in substantial compliance with these rules and any directions issued by the Registrar, and
  - (b) be clearly written, typed or reproduced.
- (3) The Registrar may refuse to accept, file, seal, or issue any document that, in the opinion of the Registrar, contravenes this rule.

## **11 Registration of agreements**

- (1) In this rule:

**commutation agreement** means an agreement to commute a liability to a lump sum, as provided by section 87F of the 1987 Act.

**lump sum agreement** means an agreement under section 66A of the 1987 Act.

- (2) A commutation agreement or lump sum agreement lodged for registration is to be in the approved form.

- (3) Within 7 days after lodgment of a commutation agreement or lump sum agreement for registration, the Registrar is to give notice to the parties identified in the agreement that:
  - (a) the agreement is registered, in which case the notice must indicate the date of registration, or
  - (b) registration of the agreement is refused, or
  - (c) in the case of a commutation agreement, the agreement has been referred for review by the Commission.
- (4) If an agreement lodged for registration is incomplete or otherwise defective, the Registrar may give notice requiring the parties to remedy the defect within 7 days during which time the Registrar may hold the application as pending. In the event that the parties fail to rectify the defect in the time specified, the application for registration is taken not to have been made.
- (5) In the case of a commutation agreement referred by the Registrar for review by the Commission, within 2 days of the Commission making a recommendation with respect to the agreement, the Registrar is to notify the parties that:
  - (a) the agreement is registered, in which case the notice must indicate the date of registration, or
  - (b) registration of the agreement is refused.

## **12 Registers**

- (1) The Registry is to maintain the following:
  - (a) a register of approved medical specialists appointed by the President pursuant to section 320,
  - (b) a register of all current proceedings,
  - (c) a register of arbitrators and mediators,
  - (d) a register of all agreements registered in accordance with rule 11.
- (2) Public access to the registers referred to in this rule is as follows:
  - (a) the registers of approved medical specialists, arbitrators and mediators and register of current proceedings before the Commission referred to in subrule 1 (a), (b) and (c) are to be available for inspection by the general public on the Internet site of the Commission at <http://www.wcc.nsw.gov.au> or in such other manner and at such other times as determined by the Registrar from time to time,
  - (b) the register of agreements registered referred to in subrule 1 (d) is to be available

for inspection by the persons and at the times determined by the Registrar from time to time.

### **13 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 of the Commission is to be kept under the control of the Registrar at all times.
- (4) The seal of the Commission is to be affixed to all documents registered by the Commission and to all notices of decisions and determinations by the Commission and to such other documents as the President may determine from time to time.

## **Part 3 Commencement of proceedings**

### **14 Commencement by application for interim payment direction**

- (1) Proceedings in relation to:
  - (a) the failure to determine a claim for weekly benefits as and when required by the 1998 Act, or
  - (b) the failure to determine a claim for medical expenses compensation as and when required by the 1998 Act, or
  - (c) the failure to commence provisional payments of compensation as required by Division 1 of Part 3 of Chapter 8 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 in the approved form and include as attachments the information and other documents required by the form.
- (3) The applicant is to serve the application on the respondent at the same time as making the application for an interim payment direction to the Commission.
- (4) 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.

### **15 Commencement by application for dispute resolution**

- (1) Proceedings in relation to a matter under the Workers Compensation Acts are to be commenced by way of an application for dispute resolution.

- (2) Where an application for dispute resolution concerns a matter referred to in rule 14 (1), the Registrar may deal with the matter in accordance with that rule, 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) An application for dispute resolution is to be in the approved form and include as attachments the information and other documents required by the form, the Workers Compensation Acts and these rules.
- (4) Within 7 days after the applicant lodges an application for dispute resolution with the Registrar, the applicant must serve a sealed copy of the application on the respondent and any other party to the proceedings.
- (5) Within 7 days after serving a copy of the application under subrule (4), the applicant must lodge with the Commission a certificate in the approved form certifying service of a copy of the application in accordance with subrule (4).
- (6) If the respondent is an employer (but not a self-insurer), the applicant must serve a copy of the application on both the employer and the employer's insurer.

#### **16 Material to be lodged with application**

- (1) For the purposes of section 290, the applicant must lodge with the application for dispute resolution all information and documents on which the party proposes to rely that are in the possession of the applicant at that time.

**Note—**

Section 290 (3) prevents a party from introducing additional material if it was not provided as and when required by the rules.

- (2) Subject to subrule (3), an applicant may not in proceedings introduce evidence that has not been included in a statement, report or other document lodged with the application for dispute resolution in the proceedings unless:
  - (a) the applicant has served and lodged with the application for dispute resolution 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 is not available at the time of service, and
    - (iv) the time it is expected to be available, and
  - (b) the evidence is included in a statement, report or other document served on all other parties and lodged as soon as practicable after that evidence becomes available.

- (3) The Commission may, for the avoidance of injustice in special circumstances, allow an applicant to introduce evidence that the applicant would otherwise be prevented from introducing because of the operation of subrule (2).

#### **17 Time of commencement of proceedings**

The time of commencement of proceedings is the time when the Registrar registers the application for dispute resolution or interim payment direction by affixing the seal of the Commission.

#### **18 Defective application**

- (1) The Registrar may refuse to register an incomplete or otherwise defective application for dispute resolution or interim payment direction.
- (2) A new application for dispute resolution or interim payment direction may be lodged at any time if the Registrar has previously refused to register an incomplete or defective prior application.

#### **19 Effect of irregularity**

- (1) If a provision of these rules is not complied with in relation to the commencement (or purported commencement) of proceedings or conduct of proceedings before the Commission, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings or any decision in the proceedings unless the Commission so determines.
- (2) The Commission in dealing with any such irregularity may wholly or partly set aside the proceedings, a step taken in the proceedings or a decision in the proceedings.

#### **20 Amendment of documents**

- (1) The Commission may, in any proceedings before it, amend any document filed in connection with the proceedings if the Commission considers the amendment to be necessary in the interests of justice.
- (2) Such an amendment may be made at any stage of the proceedings (including the commencement or purported commencement of proceedings), and on such terms as the Commission thinks fit.

### **Part 4 Parties**

#### **21 Notice of representation**

- (1) A party to a dispute must notify the Registrar and other parties in writing of the appointment at any stage in the proceedings of a legal practitioner or agent to represent the party, within 5 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, or ceases to be represented by a legal practitioner or agent, the party must notify the Registrar and other parties of that change in writing within 5 days.
- (3) If the legal practitioner or agent is to represent the party from the commencement of proceedings, the notice required under subrule (1) may be given, in the case of the applicant, in the application for dispute resolution or interim payment direction and, in the case of the respondent, in the reply to the application for dispute resolution.
- (4) 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, otherwise the Registrar is entitled to assume that the authority is not limited or restricted.

## **22 Address for service**

- (1) The address for service of any document on a party to any proceedings is, in the case of the applicant, the address set out by the applicant as the applicant's address in the application for dispute resolution, and in the case of the respondent, the respondent's address set out in the application for dispute resolution, unless the respondent indicates in writing a different address.
- (2) A party may give its address for service as care of its legal representative or agent.
- (3) A party to a dispute must notify the Registrar in writing within 2 days if at any stage in the proceedings the party's address for service changes.

## **23 Method of service**

- (1) A document is taken to have been served on or provided to a party by delivery to the address for service for that party as notified to the Registrar in accordance with this Part.
- (2) A party's address for service may be a postal address, document exchange (DX) box, fax number, email address (for electronic communications) or a physical address.
- (3) Service of a document on a party is taken to be effected:
  - (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 is 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 at the sending fax of notification of a successful transmission), or

- (e) if by electronic communication, at the time of entering the information system addressed to the party's email address included in the party's address for service as provided by the *Electronic Transactions Act 2000*.

#### **24 Alternative method of service**

- (1) Where for any reason it is impracticable to effect service of any document on a party by any method provided for by 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.

#### **25 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 of the translator and their relevant qualifications.

### **Part 5 Dispute resolution procedure**

#### **26 Reply by respondent**

- (1) The respondent must lodge with the Commission and serve on the applicant and any other party to the proceedings a sealed reply to an application for dispute resolution within 14 days of being served with a sealed copy of the application by the applicant.
- (2) The respondent is to lodge with the Commission a certificate in the approved form certifying service of the reply within 7 days of causing the reply to be served.
- (3) If the applicant is an employer (but not a self-insurer), the respondent must serve the reply on both the employer and the employer's insurer.
- (4) 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 in accordance with section 74.

#### **27 Material to be lodged by respondent**

- (1) For the purposes of section 290, the respondent must lodge with the reply to an application for dispute resolution all information and documents on which the

respondent proposes to rely that are in the possession of the respondent at that time.

**Note—**

Section 290 (3) prevents a party from introducing additional material if it was not provided as and when required by the Rules.

- (2) Subject to subrule (3), a respondent may not in proceedings introduce evidence that has not been included in a statement, report or other document lodged with the reply to an application for dispute resolution in the proceedings unless:
  - (a) the respondent has served and lodged with the reply to the application for dispute resolution 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 is not available at the time of service, and
    - (iv) the time it is expected to be available, and
  - (b) the evidence is included in a statement, report or other document served on all other parties and lodged with the Commission as soon as practicable after that evidence becomes available.
- (3) The Commission may for the avoidance of injustice in special circumstances, allow a respondent to introduce evidence that the respondent would otherwise be prevented from introducing because of the operation of subrule (2).

## **28 Registrar's powers**

- (1) The Registrar may:
  - (a) allocate a dispute to an Arbitrator, or
  - (b) deal with a dispute in accordance with Part 7 (Expedited assessment), or
  - (c) refer a matter for medical assessment in accordance with Part 8 (Medical assessment), or
  - (d) take any other action that the Registrar considers appropriate in the circumstances in accordance with the Registrar's powers.
- (2) The Registrar is to notify the parties of the reference of the dispute to an Arbitrator or of a matter for medical assessment and of the identity of the Arbitrator or approved medical specialist, as appropriate.
- (3) In the event that the employer's insurer is not a party to the proceedings but their 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.



## **29 Joining other parties and disputes**

- (1) An application for dispute resolution 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 of the Commission.
- (3) Two or more persons can be joined as the applicant or the respondent in any proceedings before the Commission where:
  - (a) if separate proceedings are brought by or against each of them, some common question of law or fact would arise in all 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, by a party, or of the Registrar's own motion, may order that the person be added as a party to the proceedings and make such other relevant orders in relation to the matter as the Registrar considers appropriate.
- (5) For the purposes of subrule (4), if the person is joined on application by a party, the party must serve on the person a sealed notice in the approved form that:
  - (a) includes a copy of the application for dispute resolution and documents and other information required to be attached to the application, and
  - (b) includes a copy of the respondent's reply to the application for dispute resolution including all required documents and information, and
  - (c) includes a copy of a notice to any other person joining that person to the proceedings, and
  - (d) advises the party joined of the time within which the party must reply to the Registrar (14 days after the date of receipt of the notice).
- (6) For the purposes of subrule (4), if the person is joined on their own application or on the motion of the Registrar, the Registrar is to serve notice on the person in the approved form.

- (7) The party joined in the proceedings must lodge with the Commission and serve on the applicant and any other party to the proceedings a sealed reply to an application for dispute resolution within 14 days of being served with the copy of the notice joining the party.
- (8) The party joined is to lodge with the Commission a certificate in the approved form certifying service of the reply within 7 days of causing the reply to be served.
- (9) If the party joined is an employer (but not a self-insurer), the notice required by this rule to be served on the party must be served on both the employer and the employer's insurer.
- (10) 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 joined party if that issue has not been included in the notice issued in accordance with section 74 by that joined party.
- (11) A party joined may respond giving reasons why the party should not properly be included as a party to the proceedings.
- (12) No proceedings of the Commission are rendered invalid by reason only of the joining of a person in error or by the failing to join a person as a party to those proceedings.

### **30 Material to be lodged by party joined**

- (1) For the purposes of section 290, a party joined in proceedings must lodge with the reply to an application for dispute resolution all information and documents on which the joined party proposes to rely that are in the possession of the joined party at that time.

**Note—**

Section 290 (3) prevents a party from introducing additional material if it was not provided as and when required by the Rules.

- (2) Subject to subrule (3), a joined party may not in proceedings introduce evidence that has not been included in a statement, report or other document lodged with the reply to an application for dispute resolution in the proceedings unless:
  - (a) the joined party has served and lodged with the reply to the application for dispute resolution 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 is not available at the time of service, and
    - (iv) the time it is expected to be available, and

(b) the evidence is included in a statement, report or other document served on all other parties and lodged as soon as practicable after that evidence becomes available.

(3) The Commission may for the avoidance of injustice in special circumstances, allow a joined party to introduce evidence that the joined party would otherwise be prevented from introducing because of the operation of subrule (2).

### **31 Application for direction requiring production of documents**

(1) An application to the Commission by a party to proceedings before the Commission for a direction under section 357 requiring the production of documents or the provision of information may only be made:

- (a) if the party is the applicant—within 7 days after being served with the respondent's reply in accordance with rule 26, or
- (b) if the party is the respondent—with the reply by the respondent to the Registrar's notice of registration of the application for dispute resolution in accordance with rule 26, or
- (c) if the party has been joined—with the reply by the party to the Registrar in accordance with rule 29,

unless the Commission is satisfied that:

- (d) the party was not aware, and could not reasonably have become aware through the exercise of due diligence, of the existence of the requested material, at the time that the application was required to be made under paragraph (a), (b) or (c), and
- (e) failure to make the direction would result in a substantial injustice to the applicant for the direction, and that the making of the order will not prejudice the other party or parties to the proceedings.

(2) When a party to proceedings makes an application for an order under section 357, the Commission is to give the parties to the proceedings at least 2 days notice of its intention to give the direction. A party may object to the proposed order.

(3) A direction under section 357 must not require production of documents or the furnishing of information unless an amount sufficient to meet the reasonable expenses of complying with the direction is paid or tendered to that person at the time of service of the direction or not later than a reasonable time before the time by which the person must comply with the direction.

### **32 Form of direction to produce documents or furnish information**

(1) A direction by the Commission to a person requiring the production of documents or

the furnishing of information in accordance with section 357 is to be in the approved form.

- (2) The direction is to specify the time and manner in which the person must comply with it.

### **33 Commission providing documents or information to another party**

- (1) When documents or information relevant to proceedings before the Commission are produced or furnished to the Commission by a person pursuant to a direction by the Commission and the Commission intends to produce or furnish the documents or information to another party to the proceedings, that party's legal representative or a medical practitioner, the Commission is to give to the parties and to the person who produced the documents or furnished the information to the Commission not less than 2 days' notice of its intention to do so.
- (2) A person required by a direction of the Commission to produce documents or furnish information may at the time of complying with the direction notify the Commission that it objects to the production of those documents or the furnishing of that information to another party to the proceedings, that party's legal representative or a medical practitioner and the grounds on which the objection is raised.
- (3) The Commission must take any such objection into account and the views of the parties in determining whether to produce the documents or furnish the information to another party to the proceedings, that party's legal representative or a medical practitioner.

### **34 Summons**

- (1) A summons issued by the Registrar requiring attendance of a person at any conference or hearing before the Commission in connection with proceedings before the Commission is to be in the approved form and must be served on the person not less than 7 days prior to the day on which the person is required to attend.
- (2) The person serving the summons must complete the section of the approved form concerning service and lodge it with the Registrar within 5 days of service.
- (3) A summons does not require attendance of a person unless an amount sufficient to meet the reasonable expenses of complying with the summons is paid or tendered to that person at the time of service of the summons or not later than a reasonable time before the time at which the person is required to attend.

### **35 Tapes, films and photographs**

- (1) When information is produced or furnished to the Commission (whether or not at the direction of the Commission) in the form of surveillance or other videotapes or audiotapes, film or photographs, any investigator's report concerning the surveillance

material must be lodged with the material.

- (2) In the case of x-rays, computerised tomography, medical ultrasound or magnetic resonance imaging:
  - (a) original films or scans are not to be lodged with the Commission, and
  - (b) original films or scans may be taken or delivered to an approved medical specialist undertaking an assessment for the purpose of proceedings concerning a medical dispute.
- (3) A party who takes or delivers original x-rays or scans referred to in subrule (3) to an approved medical specialist in the course of proceedings must notify the Commission and other parties by notice in writing not less than 7 days prior to the taking or delivery of the films or scans to the approved medical specialist.

### **36 Calling of witnesses**

- (1) A party that proposes to call a witness to provide oral evidence must include the name of that witness and a signed written statement by that witness:
  - (a) if the party is the applicant—with the application for dispute resolution, or
  - (b) if the party is the respondent—with the reply by the respondent to the Registrar's notice of registration of the application for dispute resolution in accordance with rule 26, or
  - (c) if the party is a joined party—with the reply by the party to the Registrar in accordance with rule 29 (7).
- (2) A party may call a witness to give evidence where a statement has not been filed in accordance with subrule (1) only with the leave of the Commission.
- (3) The Commission cannot grant that leave unless satisfied that admission of the evidence would prevent a substantial injustice to the party.
- (4) An application for leave under this rule can only be made if the party lodges a written and signed statement setting out the evidence of the witness.
- (5) This rule does not prevent a witness being summonsed in circumstances where the person refused to provide a written and signed statement.

### **37 Expert witness**

- (1) If a witness is an expert witness, the person cannot be called to give evidence unless a copy of a report by the witness has been lodged with the application for dispute resolution, respondent's reply (made in accordance with rule 26) or joined party's reply (made in accordance with rule 29 (7)), as appropriate.

- (2) A party proposing to call a witness to give evidence as an expert witness must ensure that the witness is aware of and adheres to any Practice Directions dealing with guidelines for expert witnesses in proceedings before the Commission.

## **Part 6 Commission proceedings**

### **38 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.

### **39 Measures to assist parties**

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

- (a) ensure that the parties to the dispute understand the nature of the application for dispute resolution and the legal implications of any assertion made in any documents or 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 dispute, and
- (c) ensure that the parties have the fullest opportunity practicable to have their side of the dispute considered without compromising the objectives of the Commission, and
- (d) ensure that the parties have the opportunity to explore settlement of the dispute.

### **40 Statement as to agreed facts and issues**

- (1) The Commission may direct the parties to file 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.
- (2) The parties are bound by the statement and may not assert the contrary except with the leave of the Commission.

### **41 Certificates of determination**

- (1) If a dispute is determined by the Commission, the Commission is to issue a certificate as to the determination in compliance with section 294 in the approved form.
- (2) A statement of the Commission's reasons attached to the certificate is to include:

- (a) the 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.

#### **42 Discontinuances**

- (1) The parties to a dispute before the Commission may agree to discontinue the proceedings at any time.
- (2) In the event of agreement to discontinue, the parties are to give notice of the discontinuance to the Registrar as soon as practicable in the approved form.
- (3) If the parties so request, the terms on which the parties agree to discontinue the proceedings may form the basis for a determination by the Commission.
- (4) In the event that the applicant elects not to proceed with a matter, notice of discontinuance in the approved form is to be given by the applicant to the Registrar and served on all other parties as soon as practicable. The notice to the Registrar is to be accompanied by a certificate in the approved form certifying that a copy of the notice has been served on all other parties.

### **Part 7 Expedited assessment**

#### **43 Interim payment directions**

An Interim Payment Direction is to be in the approved form and 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.

#### **44 Refund of interim payment direction payments**

An order for the purpose of section 304 is to be in the approved form and is to include:

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

- (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.

#### **45 Notice of revocation of interim payment direction**

- (1) An application for revocation of an interim payment direction is to be in the approved form and be lodged with the Commission.
- (2) Notice of revocation by the Registrar of an interim payment direction is to be in the approved form and given to each of the parties to the proceedings.

#### **46 Workplace injury management plans**

- (1) Before exercising a power under section 306, the Registrar is to contact the parties to the dispute and advise them of the course of action the Registrar proposes to take. Contact should be made with a view to resolving the dispute expeditiously.
- (2) A direction by the Registrar that a workplace assessment be conducted is to include:
  - (a) the names and addresses of the parties to the dispute, and
  - (b) a statement as to 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.
- (3) 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 to the person who is to conduct the assessment.
- (4) 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 5 days after receiving the direction.
- (5) The injury management consultant or other suitably qualified person who is to conduct the assessment must provide the Registrar with a brief written report in the approved form of the outcome of the assessment, setting out the reasons for any finding, as soon as practicable after it has been conducted but in any case not later than 7 days after the assessment is conducted. The Registrar must make the report available to the parties.



- (6) 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.
- (7) 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.

## **Part 8 Medical assessments and medical evidence**

### **47 Appointment of approved medical specialists**

- (1) On the appointment by the President of a medical practitioner as an approved medical specialist, the Registrar is to issue to the appointee a sealed certificate in the form approved by the President and is to enter the appointee's name on the register of approved medical specialists maintained by the Registrar.
- (2) A certificate issued under subrule (1) is to set out the terms on which the appointment is made including the period of the appointment and any restrictions as to the medical disputes that may be referred to the appointee.

### **48 Submission of medical evidence**

- (1) In any proceedings on a claim:
  - (a) only one medical report in any particular specialty may be admitted on behalf of a party to the proceedings, and
  - (b) a medical report in a specialty may not be admitted on behalf of a party to the proceedings if another medical report in that specialty has already been admitted on behalf of the party in any other proceedings on the claim or in proceedings on a related claim.
- (2) Despite subrule (1) (b), a medical report in a specialty may be admitted in proceedings even if another medical report in that specialty has already been admitted in other proceedings on the claim or a related claim if:
  - (a) the medical report to be admitted is a permissible update (under this rule) of the medical report already admitted in the other proceedings, or

- (b) the proceedings are lump sum compensation proceedings and the other proceedings were not lump sum compensation proceedings, or
  - (c) the medical report to be admitted is prepared pursuant to a direction by the Registrar or the Commission constituted by an arbitrator to the medical practitioner who prepared the report already admitted in the other proceedings to revise that report in light of the medical reports submitted by the other parties to the proceedings.
- (3) Subrule (2) operates only as an exception to subrule (1) (b) and does not affect the requirement under subrule (1) (a) that only one medical report in a particular specialty may be admitted in proceedings on behalf of a party.
  - (4) For the purposes of this rule, a medical report in more than one specialty is to be regarded as a medical report in each of those specialties.
  - (5) A medical report (the update report) is a permissible update of another medical report (the original report) if the update report is provided for the purpose of updating the original report and is provided:
    - (a) more than 6 months after the original report was provided, or
    - (b) because there has been a further material change in the worker's condition.
  - (6) The update report must have been provided by the medical practitioner who provided the original report except when that medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the update report can be provided by another medical practitioner.
  - (7) The update report can be provided as an addendum to the original report and in such a case the original report together with that addendum constitute the permissible update.
  - (8) This rule does not apply in respect of a medical report provided in respect of the examination of an injured worker by an approved medical specialist under section 322.

## **Part 9 Appeals**

### **49 Referral of question of law**

- (1) An application by a party to a dispute for leave to refer a question of law to the Commission constituted by the President is to be in the approved form and is to be lodged with the Arbitrator in the proceedings for referral to the President. The application is to include full details of and documentation supporting the referral.
- (2) An application made by an Arbitrator is to be in the same form and a copy of the application is to be provided by the Commission to each of the parties.

- (3) A party lodging an application for leave to refer the question of law is to serve a copy of the application (including any attachments) on each of the other parties. The application must be accompanied by a certificate in the approved form certifying that a copy of the application (including any attachments) has been served on all the other parties to the dispute.

#### **50 Appeal against decision of Commission constituted by Arbitrator**

- (1) An application by a party to a dispute for leave to appeal against a decision of the Commission constituted by an Arbitrator is to be in the approved form. The application is to set out all grounds of appeal and include full supporting documentation.
- (2) The application must be lodged with the Registrar within 28 days after the making of the decision against which the appeal is being made.
- (3) The party lodging the application for leave to appeal is to serve a copy of the application (including any attachments) on each of the other parties. The application lodged with the Registrar must be accompanied by a certificate in the approved form certifying that a copy of the application (including any attachments) has been served on all the other parties to the dispute.

#### **51 Appeal against medical assessment**

An appeal by a party to a medical dispute against a medical assessment is to be lodged in the approved form.

### **Part 10 Work injury damages**

#### **52 Pre-filing statement**

- (1) For the purposes of section 315, a pre-filing statement is to be in the form of the statement of claim to be subsequently 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.
- (3) The claimant must lodge with the Commission a certificate in the approved form certifying service of the pre-filing statement within 2 days of causing the pre-filing statement to be served.

#### **Note—**

Section 313 prevents a pre-filing statement being served if there is a dispute as to whether the degree of permanent impairment is sufficient for an award of damages.

### **53 Material to be served with pre-filing statement**

- (1) In accordance with section 315, 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) notification provided to the claimant in accordance with section 281 (2B) 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.

### **54 Pre-filing defence**

- (1) For the purposes of section 316, a pre-filing defence is to be in the form of a grounds of defence to be subsequently 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 the 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 issued in accordance with section 74.
- (3) The defendant is to lodge with the Commission a certificate in the approved form certifying service of the pre-filing defence within 2 days of causing the pre-filing defence to be served.

### **55 Material to be served with pre-filing defence**

In accordance with section 316, the defendant must serve with the pre-filing defence all information and documents upon which the defendant proposes to rely.

### **56 Defective pre-filing statement**

- (1) In accordance with section 317, referral of a dispute as to whether a pre-filing statement served by a claimant is defective, must be in the approved form and lodged with the Registrar within 21 days of the pre-filing statement being served by the claimant.
- (2) An application under subrule (1) cannot be made unless the requirements set out in section 317 (1) have been complied with.
- (3) The party referring the dispute must within 7 days of lodging the approved form with the Registrar serve a sealed copy of the approved form on the other parties to the dispute for work injury damages.

- (4) The party referring the dispute as to the pre-filing statement is to lodge with the Commission a certificate in the approved form certifying service of the form referring the dispute within 2 days of causing the approved form to be served.
- (5) A direction given by the Registrar in relation to the action necessary to cure a defect in a pre-filing statement served by a claimant is to be served on both the claimant and any other party to the dispute by the Registrar as soon as reasonably practicable.

#### **57 Referral for mediation**

- (1) An application for mediation is to be in the approved form and include such information as the form requires and is to be accompanied by the pre-filing statement and information required to be served on the defendant and any other party in accordance with rules 53 and 55.
- (2) Within 7 days of lodging the application for mediation with the Registrar the claimant must serve a sealed copy of the application on the defendant and any other party to the proceedings.
- (3) The claimant must lodge with the Commission a certificate in the approved form certifying service of the application for mediation within 2 days of causing an application to be served.

#### **58 Response to a referral for mediation**

- (1) The defendant is to lodge with the Commission a reply to an application for mediation within 7 days of being served with a sealed copy of the application by the claimant.
- (2) A reply to an application for mediation is to be in the approved form and include such information as the form requires and is to be accompanied by the pre-filing defence and information required to be served on the claimant and any other party in accordance with rules 53 and 55.
- (3) If a defendant declines to participate in mediation of the claim on the basis that liability in respect of the claim is wholly denied, the defendant is to notify the claimant and the Registrar in writing within 7 days of being served with the sealed copy of the application for mediation.
- (4) The defendant must lodge with the Commission a certificate in the approved form certifying service of the reply to an application for mediation within 2 days of causing a reply to be served

#### **59 Direction as to mediation**

- (1) A direction given by the Registrar in accordance with section 318A (5) is to include:
  - (a) the name of the mediator appointed, and

(b) the location at which, and the date and time when, the mediation is to take place.

- (2) The Registrar is to cause a copy of the direction to be served on the parties and the mediator within 2 days of the direction being given, and in any case not less than 21 days prior to the date for mediation.

#### **60 Mediator unable to mediate**

- (1) If a mediator to whom a claim is referred by the Registrar is not prepared, or is unable, to act as a mediator in the matter, the mediator must notify the Registrar and the parties to the dispute in writing as soon as practicable.
- (2) If a mediator appointed by the Registrar declines or fails to act as a mediator with respect to the claim, the Registrar may revoke the direction referring the claim to the mediator and make a direction referring the claim to another mediator.

#### **61 Certificate of mediation outcome**

- (1) A certificate of mediation outcome issued in accordance with section 318B is to be in the approved form and 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 in the mediation.
- (2) If a defendant declines to participate in mediation of the claim on the basis that liability in respect of the claim is wholly denied and the defendant has notified the claimant and the Registrar in accordance with rule 58, the Registrar may issue a certificate specifying that:
- (a) the defendant declined to participate in mediation on the basis that liability with respect to the claim is wholly denied, and
  - (b) for the purposes of section 318A (4) the mediation process is considered to be complete, and
  - (c) the claimant is now permitted to commence proceedings in a court of competent jurisdiction.

### **Part 11 General**

#### **62 Practice directions**

- (1) The President, in consultation with the Deputy Presidents, may issue Practice

Directions in relation to the operation of these rules.

- (2) The Registrar is to publish and make copies generally available of any Practice Direction.
- (3) Without limiting the range of matters that may be the subject of a Practice Direction, the matters that may be the subject of a Practice Direction include:
  - (a) the procedures to be observed in the course of a conference or hearing to be conducted by an Arbitrator (including any preliminary conference or hearing),
  - (b) what constitutes an “obvious error” in relation to a certificate of determination issued by the Commission for the purposes of section 294 (3) or in relation to a medical assessment certificate for the purposes of section 325 (3),
  - (c) the procedure to be followed by Arbitrators in the conduct of proceedings.

### **63 Reckoning of time**

Any period of time fixed for the doing of any act in or in connection with a dispute under the jurisdiction of these rules is to be reckoned as follows:

- (a) if the period is reckoned by reference to a given day or event, the given day or day of that event is not counted, and
- (b) if the period is for 7 days or less and includes a day on which the Registry is closed, that day is excluded, and
- (c) if the last day of the period is a day on which the Registry is closed, the period extends to the next day on which the Registry is open.

### **64 Extension and abridgement of time**

Subject to the Workers Compensation Acts, any regulations under those Acts and any current Practice Direction, in relation to any proceedings before the Commission the President may order the extension or abridgement of time fixed by an any order or determination of the Commission, whether or not requested by a party.

### **65 Running of time**

- (1) Time does not run in proceedings before the Commission during such period as may be fixed by a Practice Direction.
- (2) In any calculation of time for the purposes of proceedings before the Commission, month means calendar month.

### **66 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 in circumstances where the President determines it is otherwise necessary in view of the unavailability of NAATI accredited interpreters, the President may approve an interpreter or interpreters for use in those proceedings.

#### **67 Continuation of proceedings in the case of death or bankruptcy**

- (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 interests or liability of a party 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 new 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 Court 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 Court may order that the proceedings be dismissed if no application has been made under subrule (1).

#### **68 Proceedings involving minors and incapacitated persons**

- (1) The Commission may appoint any person it thinks fit to represent a party who appears to the Commission to be an incapacitated person.
- (2) In this rule:

***incapacitated person*** means:

- (a) a minor, or



- (b) a person who is totally or partially incapable of representing himself or herself in proceedings before the Commission because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled.