

# Personal Injury Commission Rules 2021

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New South Wales

## Status Information

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## Contents

<b>Part 1 Introduction</b> .....	8
1 Name of Rules .....	8
2 Commencement .....	8
3 Object of Rules .....	8
4 Definitions .....	8
<b>Part 2 Application</b> .....	8
5 Proceedings to which Rules apply.....	8
6 Dispensing with requirements of Rules.....	9
7 Directions in circumstances not covered by Rules.....	9
8 Irregularities in Commission proceedings.....	10
9 Procedural orders by non-presidential members and merit reviewers .....	10
10 Relationship between Rules and procedural directions .....	10
<b>Part 3 Administration</b> .....	10
11 Registry .....	10
12 Seal of Commission .....	11
13 Delegation of functions of President or Division Head.....	11
14 Register of delegations.....	11
15 Use of ECM system .....	12
<b>Part 4 Documents</b> .....	13
<b>Division 4.1 Forms and documents</b> .....	13
16 Approval of forms .....	13

17 Form and content of documents.....	13
18 Language of documents .....	13
<b>Division 4.2 Amendment of documents .....</b>	<b>14</b>
19 Leave to amend documents .....	14
20 Amendment of documents .....	14
21 Minor or agreed amendments of documents .....	15
22 Directions concerning amendment of documents .....	15
<b>Division 4.3 Lodgment of documents .....</b>	<b>15</b>
23 Lodgment of documents with and issue of documents by Commission .....	15
24 Lodgment of documents by ECM system.....	16
25 Lodging of statutory declarations by ECM system.....	16
26 When documents taken to be received or served .....	17
<b>Division 4.4 Service of documents .....</b>	<b>18</b>
27 Address for service .....	18
28 Service between parties .....	18
29 Sealed copies of documents.....	18
30 Substituted service.....	19
31 Service outside Australia .....	19
32 Service of documents on Authority .....	19
<b>Part 5 Evidence.....</b>	<b>20</b>
<b>Division 5.1 General .....</b>	<b>20</b>
33 Production of recordings, films and electronic documents .....	20
34 Calling witnesses .....	21
35 Expert witnesses .....	22
36 Use of interpreters.....	22
<b>Division 5.2 Notices for production .....</b>	<b>23</b>
37 Application.....	23
38 Definitions .....	23
39 Notice for production .....	23
40 Time for service and production .....	23

41 Compliance with notice for production .....	24
42 Conduct money for compliance with notice for production .....	25
<b>Division 5.3 Directions for production .....</b>	<b>25</b>
43 Definitions .....	25
44 Exercise of functions of President.....	26
45 Production of Commission record of proceedings.....	26
46 Request for direction for production .....	26
47 Direction for production.....	26
48 Service of direction for production .....	27
49 Compliance with direction for production .....	27
50 Objection to direction for production .....	28
51 Objection after production by party entitled to first access.....	29
52 Inspection and return of produced documents .....	30
53 Conduct money for compliance with direction for production .....	30
54 Exemption from production .....	30
<b>Division 5.4 Summonses .....</b>	<b>31</b>
55 Definitions .....	31
56 Issue and service of summons .....	31
57 Variation of summons .....	31
58 Conduct money for compliance with summons .....	32
<b>Part 6 Representation and parties.....</b>	<b>32</b>
59 Exercise of functions under Part .....	32
60 Notice of representation .....	32
61 Representation of insurer in certain workers compensation proceedings.....	33
62 Orders concerning joinder .....	33
63 Service of documents concerning joinder and replies .....	34
64 Consolidation or splitting proceedings.....	35
<b>Part 7 Commencement of applicable proceedings .....</b>	<b>35</b>
65 Exercise of functions under Part .....	35
66 Application to commence applicable proceedings.....	35
67 Material to be lodged in applicable proceedings .....	36

68 Schedule of earnings .....	37
69 Fixing of time for applicable proceedings .....	37
70 Statement of agreed facts and issues in Commission proceedings.....	38
71 Determination of dispute in Commission proceedings by consent order.....	38
<b>Part 8 Conduct of applicable proceedings generally .....</b>	<b>38</b>
72 Exercise of functions under Part .....	38
73 Guiding principles for applicable proceedings .....	39
74 Measures to assist parties .....	39
75 Request that application be expedited.....	39
76 Discontinuance of proceedings.....	39
77 Dismissal of proceedings .....	39
78 Statement of reasons for decision .....	40
<b>Part 9 Workers compensation proceedings.....</b>	<b>41</b>
<b>Division 9.1 Commencement of workers compensation proceedings .....</b>	<b>41</b>
79 Workers compensation proceedings for expedited assessment .....	41
80 Application to resolve dispute other than for expedited assessment .....	42
81 Joinder of certain persons for applications concerning death of worker .....	42
82 Registration of commutation agreements .....	43
83 Applications for threshold disputes .....	43
84 Defective pre-filing statement.....	43
85 Direction for access to information or premises .....	44
<b>Division 9.2 Pre-filing statements and mediation .....</b>	<b>45</b>
86 Pre-filing statements and pre-filing defences .....	45
87 Referral for mediation.....	45
88 Response to application for mediation .....	46
89 Mediator unable to mediate claim.....	46
90 Certificate of mediation outcome .....	46
<b>Division 9.3 Persons under legal incapacity .....</b>	<b>47</b>
91 Proceedings for work injury damages involving party under legal incapacity .....	47
<b>Part 10 Motor accident proceedings.....</b>	<b>47</b>

<b>Division 10.1 Motor accident proceedings under MAC Act</b> .....	47
92 Application for general assessment of claim .....	47
93 Application for special assessment of certain disputes .....	48
<b>Division 10.2 Motor accident proceedings under MAI Act</b> .....	49
94 Application for assessment of claim for damages .....	49
95 Application for approval of damages settlement.....	49
96 Application for miscellaneous claims assessment .....	49
97 Persons under legal incapacity .....	50
<b>Division 10.3 Motor accident proceedings generally</b> .....	50
98 Application for mandatory exemption from claims assessment .....	50
99 Consideration of discretionary exemption from claims assessment .....	51
100 Schedule of damages .....	51
101 Standing over of motor accident proceedings for assessment of damages .....	52
<b>Part 11 Medical assessment proceedings</b> .....	52
<b>Division 11.1 Commencement of medical assessment proceedings</b> .....	52
102 Application for medical assessment of treatment dispute.....	52
103 Application for medical assessment of permanent impairment dispute .....	53
104 Application for further medical assessment .....	53
105 Application for assessment of medical dispute .....	54
106 Service of applications and replies .....	54
<b>Division 11.2 Conduct of medical assessment proceedings</b> .....	55
107 Application of Part 5 of PIC Act .....	55
108 Conduct of medical assessment proceedings.....	56
109 Surveillance recordings .....	56
110 Entitlement to support person.....	57
111 Medical assessment certificate for multiple assessments of permanent impairment.....	57
112 Correction of incomplete certificate .....	58
113 Recording of medical assessment proceedings .....	58
<b>Part 12 Merit review proceedings</b> .....	58

114 Application of Part 5 of PIC Act .....	58
115 Application for merit review .....	59
116 Conduct of merit review proceedings .....	60
117 Statement of reasons for decision of insurer .....	60
118 Assessment of legal costs for merit review .....	60
<b>Part 13 Appeals and reviews</b> .....	<b>60</b>
<b>Division 13.1 Referral of questions of law to Commission</b> .....	<b>60</b>
119 Application of Division .....	60
120 Application by party for workers compensation question of law referral .....	61
121 Referral on non-presidential member's own motion .....	61
<b>Division 13.2 Workers compensation dispute appeals to Commission</b> ....	<b>62</b>
122 Application of Division .....	62
123 Application for workers compensation dispute appeal .....	62
124 Notice of opposition .....	63
125 Notice of contention and reply .....	63
126 Non-compliance with procedural requirements .....	64
<b>Division 13.3 Panel review proceedings</b> .....	<b>64</b>
127 Application of Part 5 of PIC Act .....	64
128 Conduct of panel review proceedings .....	65
129 Applications for appeals and reviews .....	65
130 Certificate of determination under MAI Act .....	66
<b>Part 14 Miscellaneous</b> .....	<b>66</b>
131 Publication of decisions .....	66
132 De-identification or redaction of publishable decisions .....	66
133 Certificate as to amount ordered to be paid .....	68
133A Extension of time for making certain applications .....	68
134 Savings .....	69
<b>Dictionary</b> .....	<b>70</b>

# Personal Injury Commission Rules 2021



New South Wales

## Part 1 Introduction

### 1 Name of Rules

These Rules are the *Personal Injury Commission Rules 2021*.

### 2 Commencement

These Rules commence on the establishment day.

### 3 Object of Rules

The object of these Rules is to give effect to the guiding principle for the PIC Act and the Commission rules in their application to proceedings in the Commission.

**Note—**

Section 42 of the PIC Act provides that the guiding principle for the PIC Act and the Commission rules, in their application to proceedings in the Commission, is to facilitate the just, quick and cost effective resolution of the real issues in the proceedings.

### 4 Definitions

(1) The Dictionary defines words used in these Rules.

**Note—**

The *Personal Injury Commission Act 2020* and the *Interpretation Act 1987* contain definitions and other provisions affecting the interpretation and application of these Rules.

(2) Words used in these Rules in relation to proceedings under enabling legislation have the same meaning as in the enabling legislation concerned, except to the extent they are defined differently in these Rules or the context or subject-matter indicates or requires a different meaning.

## Part 2 Application

### 5 Proceedings to which Rules apply

(1) The purpose of this rule is to define the different kinds of proceedings to which provisions of these Rules may apply.



- (2) Each of the following are **applicable proceedings**—
  - (a) Commission proceedings,
  - (b) mediation proceedings,
  - (c) medical assessment proceedings,
  - (d) merit review proceedings,
  - (e) panel review proceedings.
- (3) **Commission proceedings** are proceedings before the Commission under the PIC Act or enabling legislation.
- (4) **Mediation proceedings** are proceedings before a mediator under enabling legislation.
- (5) **Medical assessment proceedings** are proceedings before a medical assessor under enabling legislation.
- (6) **Merit review proceedings** are proceedings before a merit reviewer under enabling legislation.
- (7) **Panel review proceedings** are proceedings before a panel under enabling legislation for an appeal against, or a review of, a decision made in medical assessment proceedings or merit review proceedings.

## **6 Dispensing with requirements of Rules**

- (1) The Commission may, by order, dispense with a requirement of these Rules in relation to particular Commission proceedings if satisfied it is appropriate to do so.
- (2) The President may, by order, dispense with a requirement of these Rules in relation to particular applicable proceedings, or particular kinds of applicable proceedings, if satisfied it is appropriate to do so.
- (3) The power given to the President by subrule (2) extends to a requirement of Part 5 of the Act applied to applicable proceedings, other than Commission proceedings, by a provision of these Rules.
- (4) A requirement may be dispensed with under this rule before or after the occasion for compliance with the requirement arises.

## **7 Directions in circumstances not covered by Rules**

- (1) The Commission may give directions in relation to particular Commission proceedings concerning an aspect of practice or procedure for which these Rules or the procedural directions do not provide.

- (2) The President may give directions in relation to particular applicable proceedings, or particular kinds of applicable proceedings, concerning an aspect of practice or procedure for which these Rules or the procedural directions do not provide.
- (3) The power given to the President by subrule (2) extends to a requirement of Part 5 of the Act applied to applicable proceedings, other than Commission proceedings, by a provision of these Rules.

## **8 Irregularities in Commission proceedings**

- (1) If these Rules are not complied with in relation to the commencement or conduct of Commission proceedings, the failure to comply is to be treated as an irregularity and does not nullify the proceedings or a decision in the proceedings unless the Commission determines otherwise.
- (2) The Commission may deal with an irregularity by wholly or partly setting aside—
  - (a) the proceedings, or
  - (b) a step taken in the proceedings, or
  - (c) a decision in the proceedings.

## **9 Procedural orders by non-presidential members and merit reviewers**

A non-presidential member or merit reviewer to whom applicable proceedings are referred may make any order relating to the procedure to be followed in the proceedings, including an order striking out the proceedings or any step in the proceedings, that could be made by the President.

## **10 Relationship between Rules and procedural directions**

- (1) These Rules are intended to be read together with the procedural directions.
- (2) However, these Rules prevail over the procedural directions to the extent the directions are inconsistent with these Rules.

## **Part 3 Administration**

### **11 Registry**

- (1) The Commission is to maintain a registry.
- (2) The Registry is to be under the control and direction of the principal registrar, subject to the general control and direction of the President.
- (3) The address of the Registry is—
  - (a) for the purpose of the delivery of documents—as notified on the Commission website, and

- (b) for the purpose of sending documents or correspondence—
  - (i) by email—help@pi.nsw.gov.au,
  - (ii) by ECM system—as notified on the Commission website,
  - (iii) by post—

The Registry  
Personal Injury Commission  
PO Box 594, Darlinghurst NSW 1300.

- (4) The President may vary an address of the Registry specified in subrule (3) by giving notice of the varied address at appropriate times and in an appropriate manner.
- (5) The Registry is to be open to the public for business at the times and on the days directed by the President from time to time.
- (6) Subrule (5) does not apply on Saturdays, Sundays and public holidays or other days on which public offices are closed.

## **12 Seal of Commission**

- (1) The seal of the Commission is to be in the form, whether electronic or otherwise, determined by the President from time to time.
- (2) The seal of the Commission is to be applied to the following documents—
  - (a) a document registered by the Commission, and
  - (b) a certificate of a decision or determination by the Commission, and
  - (c) other documents required to be sealed by these Rules or as the President may determine from time to time.

## **13 Delegation of functions of President or Division Head**

- (1) All of the functions of the President under the PIC Act, the PIC regulations, enabling legislation and these Rules are prescribed for the purposes of section 18(1)(b) of the PIC Act.
- (2) All of the functions of a Division Head of a Commission Division under the PIC Act, the PIC regulations, enabling legislation and these Rules are prescribed for the purposes of section 18(3)(b) of the PIC Act.

## **14 Register of delegations**

- (1) The President is to keep a register of delegations and subdelegations given under section 18 of the PIC Act.

- (2) A delegation or subdelegation is to be included in the register—
  - (a) if given before the establishment day—as soon as reasonably practicable after the establishment day, and
  - (b) if given on or after the establishment day—as soon as is reasonably practicable after it is given.
- (3) The President is to arrange for information in the register to be published on the Commission website.
- (4) A failure to comply with this rule in relation to a delegation or subdelegation does not affect its validity.

### **15 Use of ECM system**

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

## **Part 4 Documents**

### **Division 4.1 Forms and documents**

#### **16 Approval of forms**

- (1) The President may approve forms for use in applicable proceedings.
- (2) The approved forms may be published on the Commission website.
- (3) If there is no approved form for a document, the document is to be in the form that is drafted to the satisfaction of the President.

#### **17 Form and content of documents**

- (1) A document lodged with or served on the Commission must—
  - (a) have a heading that clearly identifies the applicable proceedings to which the document relates and the nature and purpose of the document, and
  - (b) be in the approved form, if any, and
  - (c) substantially comply with the other requirements of these Rules, the procedural directions or other directions of the President, and
  - (d) be clearly written, typed or reproduced.

**Note—**

See section 80 of the [Interpretation Act 1987](#) about compliance with approved forms.

- (2) The President may refuse to accept, seal or issue a document that, in the opinion of the President, contravenes this rule.
- (3) If the President refuses to register a document under subrule (2)—
  - (a) a new document may be lodged to replace the document, and
  - (b) time continues to run for the applicable proceedings for which a replacement document is lodged.

#### **18 Language of documents**

A document in a language other than English lodged with or served on the Commission must be accompanied by—

- (a) an English translation, and
- (b) a declaration in the approved form by the translator that the translation is an accurate translation.

## **Division 4.2 Amendment of documents**

### **19 Leave to amend documents**

- (1) The Commission may, on the application of a party to applicable proceedings, give the party leave to amend a document lodged by the party in the proceedings if the Commission considers the amendment to be necessary to avoid an injustice.
- (2) However, the Commission must not give leave to amend a document if the amendment would have the effect of substantially altering the parties to the proceedings unless the Commission considers the amendment to be necessary in the interests of justice.
- (3) An amendment may be made during the proceedings, including after the commencement or purported commencement of the proceedings, and on any terms the Commission thinks fit.
- (4) This rule does not apply to the amendment of information or a document that is required to be lodged by rule 67.

### **20 Amendment of documents**

- (1) An application by a party to applicable proceedings for leave to amend a document lodged by the party must be in writing and fully set out the grounds for the application.
- (2) The party seeking the amendment must lodge and serve the application on the other parties.
- (3) A party who wishes to object to the amendment must, within 2 working days of being served with the application—
  - (a) lodge written notice of the objection with reasons, and
  - (b) serve the notice of objection on the other parties.
- (4) If the application is made before the Commission is constituted to deal with the proceedings, the President is to determine the application, subject to subrule (8)(b).
- (5) If the application is made after the Commission is constituted to deal with the proceedings, the Commission is to determine the application.
- (6) An application may be determined solely on the basis of the written application and any written notice of objection.
- (7) Without limiting subrule (6), the President or Commission may, when considering an application, seek further oral or written information from a party.
- (8) The President may, when considering the application—

- (a) list the application for hearing before the President, or
- (b) refer the application to a member for determination.

(9) The Commission may, when considering an application, list the application for hearing before the Commission.

## **21 Minor or agreed amendments of documents**

(1) This rule applies if the amendment of a document in Commission proceedings for which leave is sought is—

- (a) of a minor nature and will not have a substantive effect on the case to be put by any party, or
- (b) consented to by all parties to the proceedings.

(2) If the application for leave is made before the Commission is constituted to deal with the proceedings, the President may grant leave even though the party applying has not complied with rule 20.

(3) If the application for leave is made after the Commission is constituted to deal with the proceedings, the Commission as constituted may grant leave even though the party applying has not complied with rule 20.

(4) To avoid doubt, the requirements of rule 20 continue to apply to leave granted in accordance with this rule.

## **22 Directions concerning amendment of documents**

If the Commission gives leave to amend a document—

- (a) the Commission may give directions as to the conduct of the Commission proceedings consequent on the amendment, and
- (b) a direction given must be complied with as though the direction was a provision of these Rules.

## **Division 4.3 Lodgment of documents**

### **23 Lodgment of documents with and issue of documents by Commission**

(1) All documents required or permitted to be lodged with, or issued by, the Commission must be lodged with, 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 an ECM system.

(3) The President may direct that a document, or a document of a class, can or cannot be lodged with or served on the Commission in any of the following ways—

- (a) by email—by sending it to the Registry email address under rule 11,
- (b) by hand—by delivering it to the Commission at the Registry,
- (c) by post—by sending it by prepaid post to the Registry postal address under rule 11.

(4) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth and any order or direction issued by the President.

#### **24 Lodgment of documents by ECM system**

- (1) A document lodged in applicable proceedings on behalf of a party by means of an ECM system, may be lodged by—
  - (a) the party, or
  - (b) a person who is authorised to sign documents on the party’s behalf, or
  - (c) a person who has been directed to lodge the document by a person who is authorised under paragraph (b).
- (2) A document lodged by means of an ECM system that is required to be signed by a person is, if the person’s name is printed where the person’s signature would otherwise appear on the document, taken—
  - (a) to have been duly signed, and
  - (b) for appeals allocated to the Workers Compensation Division to which section 327 or 352 of the 1998 Act apply—to have been duly certified for the purposes of sections 327(8) and 352(7A) of the 1998 Act.
- (3) A document lodged by means of an ECM system is lodged as soon as it is received by the Commission.
- (4) The President must register a document that is lodged by means of an ECM system unless the President refuses to accept the document under rule 17(2).
- (5) A document lodged by means of an ECM system is registered as soon as it is accepted by the President.
- (6) The person by whom a document is lodged is to be notified, by means of an ECM system, of the lodgment and registration of the document, including the date of lodgment and registration.

#### **25 Lodging of statutory declarations by ECM system**

- (1) If a statutory declaration is lodged by an Australian legal practitioner or agent of a party by means of an ECM system, the practitioner or agent is taken to have



undertaken to the Commission that, if the Commission directs, the practitioner or agent will lodge the original statutory declaration in accordance with the direction.

- (2) If a statutory declaration is lodged otherwise than by an Australian legal practitioner or agent of a party by means of an ECM system, the original statutory declaration must be lodged if the Commission directs.
- (3) A document referred to in a statutory declaration that cannot be lodged by means of an ECM system is taken to be an exhibit, and not an annexure, regardless of the terms of the statutory declaration.

## **26 When documents taken to be received or served**

- (1) A document lodged with or served on the Commission, or correspondence directed to the Commission, by an ECM system or email, is taken to be received—
  - (a) at the time of entering the information system at the Commission, or
  - (b) if it is received after 5 pm—on the next working day.
- (2) A document lodged with or served on the Commission, or correspondence directed to the Commission, by hand or post, is taken to be received—
  - (a) on the day it is delivered to the Commission, or
  - (b) if it is received after 4.30 pm on a working day or at any time on a non-working day—on the next working day.
- (3) A document served by the Commission, or correspondence forwarded by the Commission, by an ECM system or email, is taken to be received—
  - (a) at the time of entering the information system of the addressee, or
  - (b) if it is received after 5 pm—on the next working day.
- (4) A document served by the Commission, or correspondence forwarded by the Commission, by hand, is taken to be received—
  - (a) on the day it is delivered to the addressee, or
  - (b) if it is received after 4.30 pm on a working day or at any time on a non-working day—on the next working day.
- (5) A document served by the Commission, or correspondence forwarded by the Commission, by post, is taken to be received—
  - (a) on the seventh working day after the day of sending by prepaid post, or
  - (b) if it is received after 4.30 pm on a working day or at any time on a non-working day—on the next working day.

- (6) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth and any order or direction issued by the President.

## **Division 4.4 Service of documents**

### **27 Address for service**

- (1) An application or reply lodged with the Commission must contain an address for service for the person or body lodging the document.
- (2) A party's address for service is to be an email address, but if an email address is not available, the address may be a postal or physical address.
- (3) A party may give the party's address for service as care of the party's legal representative or agent.
- (4) A party to applicable proceedings, or the party's legal representative or agent, may change the party's address for service during the proceedings.
- (5) A party to applicable proceedings, or the party's legal representative or agent, must, within 2 working days of a change to the party's address for service, notify the President and the other parties.

### **28 Service between parties**

- (1) A document is taken to have been served on or provided to a party if the document is delivered, or forwarded by one of the methods referred to in subrule (2), to the address for service of the party.
- (2) Service of a document by a party on a receiving party is taken to be effected if the document is received by 5 pm—
  - (a) for service by an ECM system or email—at the time the document is capable of being received by the receiving party,
  - (b) for service by hand—on the day of delivery,
  - (c) for service by post—on the seventh working day after the day of sending by prepaid post.
- (3) If the document is received after 5 pm on any day or on a non-working day, it is taken to be received on the next working day.
- (4) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth and any order or direction of the President.

### **29 Sealed copies of documents**

If a party is required to serve a sealed copy of a document—

- (a) on registering the document, the President must seal the document and return it to the party, and
- (b) the party must, within 7 days after service of the document, lodge a certificate certifying each of the following—
  - (i) the date of service,
  - (ii) the method of service,
  - (iii) the party or other person served,
  - (iv) the address at which service was effected.

### **30 Substituted service**

- (1) On the application of a party, the President may, by order, direct service of a document on a party to be effected differently than a way specified by these Rules if satisfied that it is impracticable for service to be effected in a way specified by these Rules.
- (2) An application for an order under this rule must be supported by a statutory declaration showing the grounds for the application.
- (3) Without limiting subrule (1), the President 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.

### **31 Service outside Australia**

If a document is to be served outside Australia, 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 of the document in the official language of the country of service, together with a certificate setting out the name and relevant qualifications of the translator.

### **32 Service of documents on Authority**

- (1) If these Rules require service of a document on the Authority in relation to workers compensation proceedings, service is to be effected as follows—
  - (a) by email—by emailing it to [litigation@sira.nsw.gov.au](mailto:litigation@sira.nsw.gov.au),
  - (b) by hand—by delivering it by hand to—

Executive Office—Workers & Home Building Compensation Regulation

State Insurance Regulatory Authority  
Level 14-15, 231 Elizabeth Street  
Sydney NSW 2000,

(c) by post—by sending it by prepaid post to—

Executive Office—Workers & Home Building Compensation Regulation  
State Insurance Regulatory Authority  
Level 14-15, 231 Elizabeth Street  
Sydney NSW 2000.

(2) If these Rules require service of a document on the Authority in relation to motor accident proceedings, service is to be effected as follows—

(a) by email—by emailing it to [litigation@sira.nsw.gov.au](mailto:litigation@sira.nsw.gov.au),

(b) by hand—by delivering it by hand to—

Executive Office—Motor Accidents Insurance Regulation  
State Insurance Regulatory Authority  
Level 14-15, 231 Elizabeth Street  
Sydney NSW 2000,

(c) by post—by sending it by prepaid post to—

Executive Office—Motor Accidents Insurance Regulation  
State Insurance Regulatory Authority  
Level 14-15, 231 Elizabeth Street  
Sydney NSW 2000.

## **Part 5 Evidence**

### **Division 5.1 General**

#### **33 Production of recordings, films and electronic documents**

(1) This rule applies to each of the following documents if a party to applicable proceedings proposes to rely on the document—

(a) a video recording,

(b) an audio recording,

(c) a film or photograph,

(d) medical imaging, including an x-ray, CT scan, MRI scan or ultrasound,

(e) a document produced or received by electronic means.

(2) If a document to which this rule applies consists of a surveillance recording or image,

an investigator's report concerning the material—

- (a) must clearly and unambiguously identify the recording or image, and
- (b) is, for the purposes of subrule (3), taken to be part of the document.

(3) A document to which this rule applies is, subject to this rule, a document for the purposes of rule 67.

(4) For a document referred to in subrule (1)(d)—

- (a) the original film or scan is not to be lodged with the Commission, and
- (b) the lodging and service of a list describing and clearly identifying the film or scan satisfies the lodging and service requirements of rule 67, and
- (c) the original film or scan may be taken or delivered to a medical assessor conducting a medical assessment.

### **34 Calling witnesses**

(1) A party to Commission proceedings who proposes to rely on the oral evidence of a witness must lodge, together with the information and documents required to be lodged and served under rule 67, a document containing—

- (a) the name of the witness, and
- (b) a written statement of the evidence to be given by the witness, signed by the witness.

(2) The party must also serve the documents and information on the other parties to the proceedings.

(3) A party may not, in Commission proceedings, call a witness to give oral evidence that has not been included in a document lodged and served as required under this rule unless—

- (a) the party has lodged and served with the information and documents required under rule 67 a statement indicating—
  - (i) the specific nature of the evidence, and
  - (ii) the reliance the party intends to place on the evidence, and
  - (iii) the reasons why the evidence has not been included in a statement as required under this rule, and
  - (iv) the time the evidence is expected to be included, and
- (b) the evidence is included in a written statement lodged and served on the other

parties as soon as practicable after the statement can be obtained.

- (4) Subrule (3) does not prevent the party from calling a person to give the evidence if—
  - (a) the person refuses to sign a statement of the oral evidence to be given in proceedings by the person, and
  - (b) the party has served a summons issued under rule 56 in relation to the person.
- (5) Despite subrule (3), the Commission may, for the avoidance of injustice, allow a party to introduce oral evidence that the party would otherwise be prevented from introducing by subrule (3).
- (6) If a party proposes to give oral evidence, this rule applies to the party as though the party was a witness for the party.

### **35 Expert witnesses**

- (1) Rule 34 applies to an expert witness in the same way as it applies to any other witness and the report of the expert witness constitutes a written statement of the evidence to be given by the witness for the purposes of rule 34(1)(b).
- (2) A party proposing to call a witness to give evidence as an expert witness has a duty to ensure the witness is aware of and adheres to any procedural direction concerning the use of expert witnesses.
- (3) Unless the Commission orders differently, expert evidence that does not comply with the procedural direction referred to in subrule (2) is not admissible in Commission proceedings.

### **36 Use of interpreters**

- (1) An interpreter may be used in Commission proceedings only if the interpreter is a NAATI-certified interpreter.
- (2) However, the President may approve an interpreter for Commission proceedings even though the interpreter is not a NAATI-certified interpreter if—
  - (a) there are currently no NAATI-certified interpreters for the language requiring translation in the proceedings, or
  - (b) the President determines it is necessary to approve the interpreter because of the unavailability of NAATI-certified interpreters.
- (3) In this rule—

***NAATI-certified interpreter*** means an interpreter certified by the National Accreditation Authority for Translators and Interpreters (NAATI).

## Division 5.2 Notices for production

### 37 Application

This Division applies only in relation to workers compensation proceedings to which section 290 of the 1998 Act apply.

**Note—**

Section 290 of the 1998 Act provides that when a dispute under the 1998 Act is referred for determination by the Commission, each party to the dispute must provide to the other party and to the President, as and when required to do so by the Commission rules, such information and documents as the rules require.

### 38 Definitions

(1) In this Division—

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

**party to proceedings** includes the insurer of an employer in workers compensation proceedings.

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

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

(2) For the purposes of this Division, a **document**—

(a) does not include a document that must be provided, under enabling legislation, to a requesting party by a claimant, employer or insurer in relation to a claim, whether on request or otherwise, except if there has been a failure to provide the document as and when required by the relevant provision, and

(b) is taken to be relevant to a fact in issue if it could rationally affect the assessment of the probability of the existence of the fact, other than by relating solely to the credibility of a witness, regardless of whether the document would be admissible in evidence.

### 39 Notice for production

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

(a) clearly identified in the notice, and

(b) relevant to a fact in issue in the proceedings.

### 40 Time for service and production

(1) A notice for production must be served on the producer within 21 days of registration

of the application that initiated the proceedings.

- (2) A producer must comply with a notice for production within 7 days of the date on which the notice was served on the producer.

#### **41 Compliance with notice for production**

- (1) A producer must comply with a notice for production by delivering to the requesting party, at the requesting party's address for service and within the time required by rule 40(2), a clear copy of the document referred to in the notice that is—
- (a) in the possession or control of the producer, and
  - (b) not the subject of a notice of objection referred to in subrule (2).
- (2) A producer must also serve on the requesting party, at the requesting party's address for service and within the time required by rule 40(2), a notice of objection concerning a document that has not been delivered, stating—
- (a) the document is not suitable for copying but may be inspected at a specified place and time and on a date within 7 days of the date on which the notice of objection was served on the requested party, or another date agreed to by the parties, or
  - (b) the document is privileged and the reasons for the claim of privilege, or
  - (c) the document is not relevant to a fact in issue in the proceedings and the reasons why it is not relevant, or
  - (d) if the producer is a claimant—an amount sufficient to meet the reasonable expenses of complying with the notice for production has not been paid, and the reasons for making the assertion, or
  - (e) the document has already been produced to the requesting party, or
  - (f) the document is, to the best of the producer's knowledge or belief, in the possession or control of another specified person, or
  - (g) the producer has no knowledge of the document's existence or location, or
  - (h) another objection to production and the reasons for the objection.
- (3) A requesting party who wishes to oppose a notice of objection must, within 2 working days of the date on which the notice of objection was served on the requesting party, lodge, and serve on the other parties, a notice of opposition.
- (4) The notice of opposition must—
- (a) set out the reasons for the opposition, and
  - (b) attach a copy of the notice for production and the notice of objection.



- (5) The Commission or the President may determine an objection to a notice for production by—
- (a) setting aside the notice for production wholly or in part, or
  - (b) directing the documents be produced to the requesting party or the Commission, or
  - (c) making another order the Commission or the President thinks fit.
- (6) If a producer fails to comply with a notice for production in workers compensation proceedings—
- (a) the requesting party may, by written notice to the principal registrar within 2 working days after the time for compliance has expired, request that the principal registrar refer the matter to the Authority for consideration of the prosecution of an offence under section 290(2) of the 1998 Act, and
  - (b) the Commission may, on the application of the requesting party or of its own motion, make a determination as to costs under Chapter 7, Part 8, Division 3 of the 1998 Act as it thinks fit, subject to the applicability of section 341 of the 1998 Act as in force before 1 October 2012.
- (7) To avoid doubt, the President may exercise a function of the Commission under subrule (6)(b) in addition to, or instead of, making an order under section 290(6)(c) of the 1998 Act.

#### **42 Conduct money for compliance with notice for production**

If a producer is a claimant, the producer is not required to comply with the notice for production, other than as required by rule 41(2)(d), unless an amount sufficient to meet the reasonable expenses of complying with the notice is paid to the producer—

- (a) at the time of service of the notice, or
- (b) within a reasonable time before the date for production under rule 40(2).

### **Division 5.3 Directions for production**

#### **43 Definitions**

In this Division—

**first access order** means an order specifying—

- (a) the party to proceedings who is to have first access to documents produced to the Commission in accordance with a direction for production, and
- (b) the period of first access for the party.

**producer** means the person named or proposed to be named in a direction for production.

#### **44 Exercise of functions of President**

A function or power of the President under this Division may be exercised by a member of the Commission in proceedings before the member.

#### **45 Production of Commission record of proceedings**

- (1) A party to proceedings (the **first proceedings**) may make a written request that the President produce the Commission's record of other proceedings for either or both of the following—
  - (a) inspection by the party, or
  - (b) use as evidence in the first proceedings.
- (2) The President must comply with a request unless the President is of the opinion that the request is unreasonable.
- (3) This Division, except for this rule, does not apply to the production of records of or by the Commission.

#### **46 Request for direction for production**

- (1) A party to proceedings may request that the non-presidential member to whom proceedings are referred order the issue of a direction under section 49 of the PIC Act for the production of documents by a person who is not a party to the proceedings.
- (2) A proposed direction for production must include a proposed first access order.

#### **47 Direction for production**

- (1) A non-presidential member to whom proceedings are referred may order or refuse to order the issue of a direction for production requested under rule 46(1)—
  - (a) at a teleconference in the proceedings, or
  - (b) in a special case and for the avoidance of injustice, subsequently.
- (2) However, a direction for production of documents must not be issued if the party who requested the issue of the direction is entitled to be provided with the documents, or copies of the documents, under—
  - (a) in workers compensation proceedings—
    - (i) an obligation imposed on a worker, employer or insurer in relation to a claim, whether on request or otherwise, under the workers compensation legislation, or

- (ii) an obligation under Part 7 of the 1987 Act, or any regulation, guideline, contract or arrangement made under the Part, if the documents are in the possession or control of the Nominal Insurer or an agent of the Nominal Insurer, or
  - (iii) an authority a worker has provided to the employer or insurer to obtain documents from a third party, unless the third party has failed to comply with the request, or special reasons prevented the employer or insurer from acting on the authority, or
- (b) in motor accident proceedings—an obligation imposed on a claimant or insurer in relation to a claim under section 6.3 of the MAI Act.
- (3) In deciding whether to order the issue of the direction for production, the non-presidential member may do any of the following—
  - (a) determine an objection by a party,
  - (b) direct the times for service of the direction and production by the producer,
  - (c) direct the making of access orders, including a first access order,
  - (d) provide for another matter the member thinks fit.
- (4) If the non-presidential member orders the issue of a direction for production—
  - (a) the party who requested the issue of the direction must prepare the direction in accordance with the terms of the order and deliver the direction to the Registry, and
  - (b) the Commission must issue the direction.
- (5) In this rule—

**Nominal Insurer** has the same meaning as in the 1987 Act.

#### **48 Service of direction for production**

- (1) A party who requested the issue of a direction for production must, not later than 7 days before the date for production specified in the direction, serve the direction on the producer and the other parties.
- (2) The method of service of a direction on a producer is the same as required by these Rules for service of a document by a party to proceedings on another party.

#### **49 Compliance with direction for production**

- (1) A producer complies with a direction for production of a document if the producer produces, by hand, post or email to the address of the Commission stated in the

direction—

(a) the document, or

(b) a clear copy of the document, unless the direction provides otherwise.

(2) The President must advise the parties to the proceedings when a document has been produced to the Commission in compliance with a direction.

(3) If a producer fails to comply with a direction, the party who requested the issue of the direction may—

(a) by oral or written notice to the producer, excuse the producer from complying with the direction, or

(b) by written notice to the President within 7 days of the date for production—

(i) request that the terms of the direction be altered, or

(ii) request an extension of time for compliance with the direction, or

(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).

(iv) (Repealed)

## **50 Objection to direction for production**

(1) A producer may object to a direction for production by objecting to—

(a) the production of documents under the direction, or

(b) the terms of access to the documents produced under the direction.

(2) The producer must, prior to the date for production, give written notice of the objection to the President, that—

(a) clearly identifies the documents that are the subject of the objection, and

(b) provides reasons for the objection.

(3) A producer who has provided a notice of objection under subrule (2) is not required to comply with the direction until the objection is determined.

(4) The President must notify the parties to the proceedings that a notice of objection has been received.

(5) A party who wishes to oppose the objection must, within 2 working days of the date on which the party was notified of the objection, lodge a notice of opposition setting out the reasons for the opposition and serve it on the other parties.

- (6) The President may, when considering an objection to a direction for production—
  - (a) seek further information from the producer or the parties, or
  - (b) determine the objection, whether solely on the basis of the notice of objection and the notice of opposition or otherwise.
- (7) The President may set aside or vary a direction for production following determination of an objection.
- (8) In addition, the President may set aside or vary a direction for production, wholly or in part—
  - (a) of their own motion, or
  - (b) on the request of a person having sufficient interest, provided the request is made in accordance with these Rules.

#### **51 Objection after production by party entitled to first access**

- (1) A party to proceedings who is entitled to first access to documents produced to the Commission in accordance with a direction for production may object to another party accessing those documents.
- (2) The party who objects to another party having access must, before the expiry of the period contained in the first access order, give written notice of the objection to the other parties and the President, that—
  - (a) clearly identifies the documents that are the subject of the objection, and
  - (b) provides reasons for the objection.
- (3) If a party provides a notice of objection under subrule (2), the other parties may access documents only in accordance with the terms of the objection until the objection is determined.
- (4) A party who wishes to oppose the objection must, before the expiry of the access period for that party, lodge a notice of opposition, setting out the reasons for the opposition, and serve it on the other parties.
- (5) The President may, when considering an objection to access—
  - (a) seek further information from the producer or the parties, or
  - (b) list the objection for hearing, or
  - (c) determine the objection, whether solely on the basis of the notice of objection and the notice of opposition or otherwise.
- (6) The President may vary a direction for production following determination of an

objection.

## **52 Inspection and return of produced documents**

- (1) A party to proceedings, or the party's legal representative or agent, may, subject to these Rules and the terms of the access order made or varied by the President—
  - (a) inspect documents produced in compliance with a direction for production, and
  - (b) make copies of the documents inspected.
- (2) The President may give directions concerning the removal from or return to the Commission of documents produced in compliance with a direction for production.
- (3) Unless the President orders differently, original documents produced to the Commission may be returned to the producer, and copies returned to the producer if requested or otherwise destroyed, 60 days after the date of expiry of the access period for the documents.

## **53 Conduct money for compliance with direction for production**

- (1) A producer is not required to comply with a direction for production unless an amount sufficient to meet the reasonable expenses of complying with the direction is paid to the producer—
  - (a) at the time of service of the direction, or
  - (b) within a reasonable time before the date for production.
- (2) However, a producer is not excused from complying with a direction unless the producer—
  - (a) objects to production under rule 50 on the basis that an amount sufficient to meet the reasonable expenses of complying with the direction has not been paid, and
  - (b) provides reasons for making the assertion.
- (3) If a producer, as a result of service of the direction, reasonably incurs an expense or loss that substantially exceeds any amount paid under subrule (1), the President may order that the party who requested the issue of the direction pay to the producer an additional amount in relation to the expense or loss.

## **54 Exemption from production**

The President may direct that a producer is not required to comply with a direction for production, or is required to comply only with part of it, if complying with the direction would pose a serious risk to the safety, health or wellbeing of a party to the proceedings or a person affected by the proceedings.

## Division 5.4 Summonses

### 55 Definitions

In this Division—

**attendee** means the person required by a summons to attend a conference or hearing before the Commission.

**requesting party** means a party to proceedings who has requested the issue of a summons for the attendance of the attendee.

### 56 Issue and service of summons

- (1) A party to proceedings may request the issue of a summons by the relevant Division Head under section 51 of the PIC Act by lodging the summons.
- (2) The Division Head must seal and issue the summons after ensuring that the correct date, time and place for the attendance of the attendee have been specified.
- (3) The requesting party must serve the summons on the attendee and each other party at least 7 days before the date of the attendance.
- (4) The Division Head may shorten the time for service under subrule (3) after receiving a written request, with reasons, from the requesting party if satisfied that—
  - (a) the attendee has consented to the shortening, or
  - (b) the circumstances warrant the shortening.
- (5) An attendee is not required to comply with a summons if the requesting party fails to serve it in accordance with these Rules.

### 57 Variation of summons

- (1) The Division Head may set aside or vary a summons, wholly or in part—
  - (a) of their own motion, or
  - (b) on the request of a person having sufficient interest, if the request is made in accordance with these Rules.
- (2) The Division Head may, after receiving a written request, with reasons, from the requesting party on or before the date of the attendance, order that—
  - (a) the terms of the summons be varied, or
  - (b) the attendee is not required to comply with the summons.

### **58 Conduct money for compliance with summons**

- (1) An attendee is not required to comply with a summons unless an amount sufficient to meet the reasonable expenses of complying with the summons is paid to the attendee—
  - (a) at the time of service of the summons, or
  - (b) within a reasonable time before the date of the attendance.
- (2) If an attendee who is not a party to the proceedings reasonably incurs, as a result of service of the summons, an expense or loss that substantially exceeds any amount paid under subrule (1), the President may order that the requesting party pay to the attendee an additional amount in relation to the expense or loss.

## **Part 6 Representation and parties**

### **59 Exercise of functions under Part**

In this Part, an **appropriate decision-maker** for applicable proceedings is—

- (a) for Commission proceedings—either the Commission or the President, or
- (b) for other applicable proceedings—the President.

### **60 Notice of representation**

- (1) A party to applicable proceedings must notify the President and the other parties within 7 days after any of the following occurs during the proceedings—
  - (a) the appointment of an Australian legal practitioner or agent to represent the party,
  - (b) a change in the Australian legal practitioner or agent representing the party,
- (2) An Australian legal practitioner or agent representing a party who ceases during applicable proceedings to represent the party must notify the President and the other parties within 7 days after ceasing to represent the party.
- (3) An Australian legal practitioner or agent who is to represent the party from the commencement of the applicable proceedings is taken to have given the notice required by subrule (1)(a) if—
  - (a) the practitioner or agent signs the first document lodged on behalf of the party in the proceedings, and
  - (b) the document gives the address of the practitioner or agent as the party's address for service.
- (4) A notice under this rule must indicate whether the authority of the Australian 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 way and to what extent.

- (5) The President is entitled to assume that the authority of an Australian legal practitioner or agent is not limited or restricted if the notice does not include an indication under subrule (4).
- (6) A notice required under this rule to be given by a party may be given by the party's Australian legal practitioner or agent.

#### **61 Representation of insurer in certain workers compensation proceedings**

- (1) This rule applies in workers compensation proceedings if the claimant is not represented by an Australian legal practitioner or agent.
- (2) Despite section 48(3) and (4) of the PIC Act, an insurer who is a party to proceedings to which this rule applies is not required to obtain the leave of the Commission to be represented by an Australian legal practitioner for the following purposes—
  - (a) the preparation and lodgment of a written application, reply, submission or other document with the Commission,
  - (b) the participation of the insurer in a preliminary teleconference or conciliation conference,
  - (c) the preparation and sending of correspondence to the Commission or another party.

#### **62 Orders concerning joinder**

- (1) An appropriate decision-maker for applicable proceedings may order that a person be joined as a party to the proceedings if the appropriate decision-maker considers that the person should be joined as a party.
- (2) An appropriate decision-maker for applicable proceedings may order that a person be removed as a party to the proceedings if the appropriate decision-maker considers that the person has—
  - (a) been improperly or unnecessarily joined, or
  - (b) ceased to be a proper or necessary party.
- (3) An appropriate decision-maker for applicable proceedings may, for the purposes of an order made under subrule (1) or (2) (the **principal order**), make other orders the appropriate decision-maker considers necessary to facilitate the operation of the principal order, including orders for the amendment of documents lodged in the proceedings and orders for service.
- (4) An appropriate decision-maker may make an order under this rule of their own motion

or on the application of the person concerned or a party.

- (5) Applicable proceedings are not rendered invalid only because—
- (a) a person was joined in error to the proceedings, or
  - (b) a person who should have been joined as a party to the proceedings was not joined.

### **63 Service of documents concerning joinder and replies**

- (1) If a person is joined as a party to applicable proceedings by order under this Part on application by a party, the party must serve the following on the person—
- (a) a notice that advises the person of the joinder and of the time within which the person must lodge and serve a reply, being 14 days after the date on which the notice was served on the person,
  - (b) a copy of the following—
    - (i) a document lodged to commence the proceedings, if any,
    - (ii) a document lodged in reply to the document referred to in subparagraph (i) or to another document lodged in the proceedings, if any
    - (iii) information or documents required to be lodged and served with a document referred to in subparagraph (i), if any,
  - (c) a copy of a notice to any other person joining the other person as a party to the proceedings.
- (2) If a person is joined as a party to applicable proceedings by order under this Part on the person's own application or on the motion of an appropriate decision-maker for the proceedings, the President is to serve notice of the joinder on the person.
- (3) A party joined who wishes to object to the joinder must include in the party's reply the reasons why the party should not be included as a party to the proceedings.
- (4) If, in workers compensation proceedings, the person joined is an employer but not a self-insurer, the notice of the joinder must also be served on the employer's insurer.
- (5) If, in workers compensation proceedings, the proceedings were commenced by way of application to resolve a dispute, the person joined as a party must, within 14 days of being served with a notice of the joinder—
- (a) lodge a reply to the application to resolve a dispute, and
  - (b) serve the reply on the applicant and the other parties.
- (6) The failure of a worker to notify of an injury as required by the Workers Compensation

Acts may not, without the leave of the Commission or the President, be raised as an issue in the reply by the party joined if the issue has not been included in a decision notice given in accordance with the 1998 Act by the party joined.

#### **64 Consolidation or splitting proceedings**

- (1) A person may lodge an originating process for applicable proceedings that relates to—
  - (a) one or more disputes arising out of a claim, or
  - (b) the same injury or series of injuries or the same event.
- (2) If there is more than one claim or dispute arising out of the same injury or series of injuries or the same event, the appropriate decision-maker for applicable proceedings may order that—
  - (a) the claims or disputes be dealt with together in the same proceedings, or
  - (b) the proceedings for each of the claims or disputes be dealt with concurrently.
- (3) An appropriate decision-maker for applicable proceedings may order that claims or disputes in the same proceedings be dealt with in separate proceedings if satisfied that it would be more appropriate to do so.
- (4) An appropriate decision-maker may, for the purposes of an order made under subrule (2) or (3) (the **principal order**), make other orders the appropriate decision-maker considers necessary to facilitate the operation of the principal order, including orders for the amendment of documents lodged in the proceedings and orders for service.
- (5) An appropriate decision-maker may make an order under this rule of their own motion or on the application of a party.

### **Part 7 Commencement of applicable proceedings**

#### **65 Exercise of functions under Part**

In this Part, an **appropriate decision-maker** for applicable proceedings is—

- (a) for Commission proceedings—either the Commission or the President, or
- (b) for other applicable proceedings—the President.

#### **66 Application to commence applicable proceedings**

- (1) Applicable proceedings may be commenced by lodging an application for the proceedings concerned in the approved form.
- (2) The application must—
  - (a) set out, or be accompanied by, the particulars and information required by the

- approved form relevant to the resolution of the real issues in the proceedings, and
  - (b) be lodged within the period specified by enabling legislation or these Rules for applications of the kind concerned, and
  - (c) comply with other procedural requirements for the application.
- (3) The President may refuse to accept an application that does not comply with a requirement of this Part.

**67 Material to be lodged in applicable proceedings**

- (1) A party to applicable proceedings must lodge and serve on the other parties, with an application to commence proceedings or a reply to an application, the following—
- (a) the information and documents relevant to the resolution of the real issues in the proceedings on which the party proposes to rely that—
    - (i) are in the possession or control of the party, and
    - (ii) that have not been lodged by a party in the current proceedings,
  - (b) the information or documents required to be provided with the application or reply by—
    - (i) the approved form for the application or reply, or
    - (ii) these Rules, or
    - (iii) the procedural directions.
- (2) Subject to subrules (3) and (4), a party may not introduce evidence that has not been—
- (a) lodged and served as required by subrule (1), or
  - (b) provided to another party as required by enabling legislation or these Rules.
- (3) If a party to applicable proceedings wishes to rely on a document not lodged and served in compliance with subrule (1), the party must—
- (a) as soon as practicable after becoming aware of the document or obtaining possession of the document, serve a copy on all other parties, and
  - (b) not later than 3 working days before a teleconference, on one occasion only and by the approved form, lodge all documents not previously lodged, and
  - (c) not later than 3 working days before a hearing, on one occasion only and by the approved form, lodge all documents not previously lodged, 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) The appropriate decision-maker for the applicable proceedings may, if it is satisfied that it is necessary to do so in the interests of justice, allow a party to introduce evidence that the party would be prevented from introducing because of the operation of subrule (2) if—
  - (a) the party complies with subrule (3), or
  - (b) the appropriate decision-maker gives the party leave to lodge additional documents following an attempt by the party, whether or not successful, to obtain consent to the lodgment from all parties to the proceedings.
- (5) (Repealed)

#### **68 Schedule of earnings**

- (1) If the amount of weekly compensation or statutory benefits is in dispute, a party must include in an application in Commission proceedings a schedule of earnings containing full particulars of the amount claimed.
- (2) If a party wishes to dispute the accuracy of a matter in the schedule of earnings, the party must lodge and serve on the other parties a schedule of earnings containing full particulars of the party's allegations of the earnings.
- (3) The schedule of earnings is to be lodged and served with the first document lodged and served by the party in the proceedings, in addition to the documents that must be lodged and served under rule 67.
- (4) A matter not disputed by a party under subrule (2) is taken to be admitted by the party.

#### **69 Fixing of time for applicable proceedings**

- (1) An appropriate decision-maker for applicable proceedings may, by order, fix the time within which a thing is to be done in or for the proceedings, if the time is not fixed by—
  - (a) the PIC Act, or
  - (b) enabling legislation, or
  - (c) these Rules, or
  - (d) a decision or order of the Commission or President.
- (2) An appropriate decision-maker for applicable proceedings may, by order, extend or shorten a time fixed for applicable proceedings—

- (a) by these Rules, or
  - (b) under Chapter 7, Part 9 of the 1998 Act.
- (3) The Commission in Commission proceedings constituted as it was when it made a decision or order that fixed a period of time may, on the application of a party or of its own motion, extend or shorten the period.
  - (4) Time does not run in relation to proceedings during a period fixed by order of the Commission in the proceedings or by a procedural direction.
  - (5) The time of commencement of applicable proceedings is the time when the President registers the document lodged for the commencement of the proceedings by sealing the document.

#### **70 Statement of agreed facts and issues in Commission proceedings**

- (1) The Commission may direct the parties to Commission proceedings to lodge a joint signed statement setting out—
  - (a) the facts and issues on which the parties agree, and
  - (b) the facts and issues that continue to be in dispute.
- (2) The parties are bound by the statement and may not assert the contrary in the proceedings, except with the leave of the Commission.
- (3) A direction must, unless the Commission orders otherwise, direct that the statement be lodged not later than 7 days before the next conference, teleconference or hearing in the proceedings.

#### **71 Determination of dispute in Commission proceedings by consent order**

- (1) If the parties to Commission proceedings about a dispute, or some of the parties, agree on the terms of an order to determine the dispute, the Commission may determine a dispute between the parties by making the order, provided the order is an order the Commission otherwise has power to make.
- (2) Before the Commission may make the order, the parties may lodge a proposed order that is signed by each party or the party's legal representative or agent.

### **Part 8 Conduct of applicable proceedings generally**

#### **72 Exercise of functions under Part**

In this Part, the **appropriate decision-maker** for applicable proceedings is—

- (a) for Commission proceedings—the Commission, or
- (b) for other applicable proceedings—the mediator, medical assessor, merit reviewer or

panel before which the proceedings are conducted.

### **73 Guiding principles for applicable proceedings**

The appropriate decision-maker for applicable proceedings must, when informing itself or themselves on any matter in the proceedings, have regard to 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.

### **74 Measures to assist parties**

The appropriate decision-maker for applicable proceedings except medical assessment proceedings is to take measures that are reasonably practicable to—

- (a) assist the parties to understand the nature of the proceedings and the legal implications of an assertion made in a document or otherwise in the proceedings, and
- (b) explain to the parties the procedures and the decisions and rulings made by the decision-maker in relation to the proceedings, and
- (c) ensure each party has the fullest opportunity practicable to have the party's case considered without compromising the objects of the Act, and
- (d) ensure that the parties have the opportunity to explore settlement in the proceedings.

### **75 Request that application be expedited**

- (1) A party to applicable proceedings may apply to the President or principal registrar for an application (the ***requested application***) in the proceedings to be expedited.
- (2) The application for expedition must contain the reasons why the requested application should be expedited.
- (3) The party must notify the other parties about the making of the application for expedition.

### **76 Discontinuance of proceedings**

An applicant may discontinue applicable proceedings, or part of applicable proceedings, as against one or all of the other parties to the proceedings, at any time before the proceedings are finally determined.

### **77 Dismissal of proceedings**

The following grounds are specified for section 54(c) of the PIC Act—

- (a) for proceedings by an application made under the workers compensation legislation—the applicant has failed to prosecute the proceedings with due despatch,
- (b) for proceedings by an application made under the motor accidents legislation—
  - (i) if the application relates to a medical assessment—the application is not likely to be ready for determination within the next 6 months, or
  - (ii) the applicant has failed, without reasonable excuse, to comply with a direction given by the Commission or the President, or
  - (iii) the applicant has failed to prosecute the proceedings with due despatch, or
  - (iv) there is no jurisdiction to determine the dispute to which the application relates, or
  - (v) the application is being used for an improper purpose or is otherwise an abuse of process, or
  - (vi) the application was made by a person who died after the application was made, unless the Commission has been provided with a copy of the grant of probate or letters of administration for the person’s estate and is satisfied that the estate is seeking to pursue the application.

**Note—**

Section 54 of the PIC Act provides that the Commission may at any stage dismiss proceedings before it—

- (a) if it is satisfied that the proceedings have been abandoned, or
- (b) if it is satisfied that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance, or
- (c) for any other ground of dismissal specified in the Commission rules.

Section 54 of the PIC Act also applies to medical assessment proceedings, merit review proceedings and panel review proceedings. See rules 107, 114 and 127.

**78 Statement of reasons for decision**

- (1) This rule applies only in relation to the following applicable proceedings—
  - (a) Commission proceedings,
  - (b) merit review proceedings.
- (2) A determination of the appropriate decision-maker in applicable proceedings to which this rule applies is to be accompanied by a brief statement of the appropriate decision-maker’s reasons for the determination that includes the following—
  - (a) the appropriate decision-maker’s findings on material questions of fact, referring to the evidence or other material on which those findings were based,



- (b) the appropriate decision-maker's understanding of the applicable law,
  - (c) the reasoning processes that led the appropriate decision-maker to the conclusions made.
- (3) Without limiting subrule (2), the reasons are to be stated sufficiently, in the opinion of the appropriate decision-maker, to make the parties to the proceedings aware of the appropriate decision-maker's view of the case made by each party.

## **Part 9 Workers compensation proceedings**

### **Division 9.1 Commencement of workers compensation proceedings**

#### **79 Workers compensation proceedings for expedited assessment**

- (1) This rule applies to the commencement of workers compensation proceedings that are—
- (a) commenced by application for expedited assessment under the 1998 Act, and
  - (b) referred under section 292 of the 1998 Act for expedited assessment.
- (2) Workers compensation proceedings under section 297 of the 1998 Act in relation to each of the following are to be commenced by lodging an application for an interim payment direction—
- (a) the failure to determine a claim for weekly benefits as and when required by the 1998 Act,
  - (b) the issue of a dispute notice in relation to a claim for weekly benefits,
  - (c) the failure to determine a claim for medical expenses compensation as and when required by the 1998 Act,
  - (d) the issue of a dispute notice in relation to a claim for medical expenses compensation,
  - (e) the failure to commence provisional payments of compensation as required by Chapter 7, Part 3, Division 1 of the 1998 Act following initial notification of an injury,
  - (f) a work capacity decision made by an insurer under section 43 of the 1987 Act.
- (3) The applicant is to serve an unsealed copy of the application on the respondent on the same day as lodging the application.
- (4) The respondent may, no later than 3 working days before the first teleconference in the proceedings, lodge a reply and serve an unsealed copy of the reply on the applicant.

**80 Application to resolve dispute other than for expedited assessment**

- (1) This rule applies to workers compensation proceedings other than for expedited assessment under the 1998 Act.
- (2) The President is not to accept a dispute for referral for determination by the Commission unless—
  - (a) the dispute application is accompanied by a certificate signed by the applicant, or the applicant's Australian legal practitioner or agent, stating the dispute is not prevented from being referred for determination by the Commission by the operation of a provision of Chapter 7, Part 4 of the 1998 Act, and
  - (b) the President is satisfied that the dispute is not prevented from being referred.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the respondent and the other parties.
- (4) The respondent must, within 21 days of registration of the application, lodge a reply to the application and serve a sealed copy of the reply on the applicant and the other parties.
- (5) The failure of a worker to notify of an injury as required by the Workers Compensation Acts may not, without the leave of the Commission, be raised as an issue in the reply by the respondent if that issue has not been included in the notice given in accordance with section 79 of the 1998 Act.
- (6) Proceedings against the respondent are taken to be struck out and no further step may be taken in the proceedings, unless the proceedings are restored, if—
  - (a) a respondent has not lodged a reply in accordance with this rule, and
  - (b) the applicant has not lodged a certificate of service certifying service of the application on the respondent in accordance with these Rules.

**81 Joinder of certain persons for applications concerning death of worker**

- (1) The following persons must be joined as respondents in proceedings for lump sum compensation under section 25 of the 1987 Act—
  - (a) the personal representative, if any, of the worker, if the personal representative is not already an applicant,
  - (b) if the proceedings are brought by or on behalf of only some of the dependants, the other dependants, and
  - (c) any other person claiming to be a dependant.
- (2) Rules 62 and 63 apply to an application to join a person required under this rule.

## 82 Registration of commutation agreements

A party to a commutation agreement under Part 3, Division 9 of the 1987 Act may apply for registration of the agreement by lodging—

- (a) a copy of the agreement, and
- (b) an application for registration of the agreement that—
  - (i) includes evidence of compliance with the requirements of section 87F(2) of the 1987 Act, and
  - (ii) attaches the relevant certificate issued by the Authority as referred to in section 87EA(1) of the 1987 Act.

## 83 Applications for threshold disputes

- (1) This rule applies to an application for the assessment of the degree of permanent impairment for the purposes of section 313 of the 1998 Act (a **threshold dispute application**).
- (2) A claimant who seeks assessment of the degree of permanent impairment disputed as referred to in section 313 of the 1998 Act must lodge a threshold dispute application in the approved form.
- (3) The application must include or attach the following—
  - (a) evidence that a claim has been made on the defendant or insurer in accordance with Chapter 7, Part 3, Division 4 or Chapter 7, Part 6, Division 2 of the 1998 Act,
  - (b) evidence that a threshold dispute exists as referred to in section 314 of the 1998 Act,
  - (c) the documents that the claimant wishes to be considered by the medical assessor who is to assess the degree of permanent impairment.
- (4) A defendant served with the application must, within 21 days after registration of the application, lodge and serve on the claimant the documents that the defendant wishes to be considered by the medical assessor who is to assess the degree of permanent impairment.

## 84 Defective pre-filing statement

- (1) If a defendant has given notice to a claimant under section 317(1) of the 1998 Act of alleged defects in a pre-filing statement, either party may refer the dispute to the President for determination in accordance with section 317(2) of the 1998 Act.
- (2) The party referring the dispute must lodge an application and attach the following—
  - (a) a copy of the pre-filing statement,

- (b) a copy of the defendant's notification,
  - (c) submissions detailing the extent to which the pre-filing statement is disputed.
- (3) The party referring the dispute must, within 7 days of registration of the application, serve a sealed copy of the application and attachments on—
- (a) the other parties, and
  - (b) if any of the parties is an employer but not a self-insurer—the employer's insurer.
- (4) The other party may, within 14 days of being served with the application, lodge a reply to the application and serve a sealed copy of the reply on the other parties.
- (5) A dispute is to be referred to the President on the earlier of—
- (a) the receipt of submissions in reply, or
  - (b) the expiry of the period of 14 days after registration of the application.
- (6) If a dispute is referred for determination, the President may—
- (a) give a direction for the filing of submissions and supporting documents on which a party relies, or
  - (b) give a direction to the claimant about the action necessary to cure a defect in the pre-filing statement, within a specified period, or
  - (c) determine that the pre-filing statement served by the claimant is not defective.

#### **85 Direction for access to information or premises**

- (1) A claimant may apply for a direction under section 318I(1) of the 1998 Act by lodging a proposed direction.
- (2) The President may give or refuse to give the direction as proposed.
- (3) If a direction is given by the President, the claimant must serve a sealed copy of the direction, at least 28 days before the expiry of the period specified in the direction for compliance with the direction, on—
- (a) the defendant, and
  - (b) if the direction is a direction to provide or allow access to specified premises and the premises are under the direct control of an agent or representative of the defendant—the agent or representative.
- (4) A defendant may object to a direction by giving written notice of the objection, with reasons for the objection, to the President and the claimant before the expiry of the period specified in the direction for compliance with the direction.

- (5) A defendant who provides a notice of objection in accordance with subrule (4) is not required to comply with the direction until the objection is determined.
- (6) A claimant may, within 7 days of the date on which the claimant was notified of an objection, oppose the objection by giving written notice of the opposition, with reasons, to the President and the defendant.
- (7) The President may, when considering an objection to a direction for access to information or premises—
  - (a) seek further information from the parties, or
  - (b) list the objection for hearing, or
  - (c) determine the objection, whether solely on the basis of the notice of objection and the notice of opposition or otherwise.
- (8) The President may set aside or vary a direction for access to information or premises following determination of an objection.

## **Division 9.2 Pre-filing statements and mediation**

### **86 Pre-filing statements and pre-filing defences**

- (1) For the purposes of section 315 of the 1998 Act, a pre-filing statement is—
  - (a) to include a copy of the statement of claim intended to be filed in court, and
  - (b) to attach the information and other documents on which the party proposes to rely.
- (2) If the defendant is an employer, but not a self-insurer, the claimant must serve the pre-filing statement on the employer and the employer's insurer.
- (3) For the purposes of section 316 of the 1998 Act, a pre-filing defence is—
  - (a) to include a copy of the defence intended to be filed in court, and
  - (b) to attach the information and other documents on which the party proposes to rely.

### **87 Referral for mediation**

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

(c) copies of the information and documents served with the pre-filing statement as required by rule 86.

- (2) A claimant who applies to refer a claim for mediation must, within 7 days of registration of the application, serve the application on the defendant
- (3) The claimant must, within 7 days of the date of service, lodge a certificate of service certifying service of the application on the other parties.
- (4) If the defendant does not lodge a response in accordance with rule 88, the claim may not be referred to mediation until the claimant lodges a certificate certifying service of the application for the referral.

### **88 Response to application for mediation**

- (1) A defendant served with an application for mediation of a claim must, within 21 days of registration of the application, lodge—
  - (a) a response to the application, and
  - (b) a copy of the pre-filing defence served by the defendant in accordance with section 316(1)(b) of the 1998 Act, and
  - (c) copies of the information and documents served with the pre-filing defence as required by rule 86.
- (2) The response to the application must indicate whether or not the defendant will decline, under section 318A(3) of the 1998 Act, to participate in mediation of the claim.
- (3) The defendant must, within 7 days of lodging the response, serve the response on the claimant.

### **89 Mediator unable to mediate claim**

- (1) If the mediator to whom a claim has been referred by the President is unwilling or unable to act as a mediator in relation to the claim, the mediator must, as soon as practicable, give written notice to the President.
- (2) The President must notify the parties to the proceedings that the mediator is unable to mediate the claim.
- (3) The President may revoke the direction referring the claim to the mediator and make a direction referring the claim to another mediator.

### **90 Certificate of mediation outcome**

If a defendant lodges a response to an application for mediation of a claim under rule 88 that indicates that the defendant will decline to participate in mediation, on the grounds

that the defendant wholly disputes liability for the claim, the President may issue a certificate to that effect.

## **Division 9.3 Persons under legal incapacity**

### **91 Proceedings for work injury damages involving party under legal incapacity**

- (1) If a party to proceedings for work injury damages is a person under legal incapacity, the provisions of the *Uniform Civil Procedure Rules 2005* relating to person under legal incapacity apply to the proceedings as though the proceedings were proceedings in the District Court.
- (2) In this rule—

***person under legal incapacity*** includes—

  - (a) a child under the age of 18 years,
  - (b) an involuntary patient or forensic patient within the meaning of the *Mental Health Act 2007*,
  - (c) a person under guardianship within the meaning of the *Guardianship Act 1987*,
  - (d) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*,
  - (e) an incommunicate person, being a person with a physical or mental disability making the person unable to receive communications, or express the person's will, with respect to the person's property or affairs.

## **Part 10 Motor accident proceedings**

### **Division 10.1 Motor accident proceedings under MAC Act**

#### **92 Application for general assessment of claim**

- (1) A claimant or insurer may lodge an application for an assessment of a claim at any time, subject to section 91 of the MAC Act.
- (2) An application may be lodged only if—
  - (a) the parties have reached agreement on whether or not the claimant is entitled to compensation for non-economic loss, or
  - (b) a medical assessor has issued a certificate determining a medical dispute under section 58(1)(d) of the MAC Act that certifies whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%, or

- (c) a medical assessor has declined to make an assessment of the degree of permanent impairment of an injured person under section 132(3) of the MAC Act, where—
    - (i) there is a medical dispute under section 58(1)(d) of the MAC Act, and
    - (ii) the assessor is not yet satisfied that the impairment caused by the injury has become permanent, or
  - (d) an application to refer a medical dispute under section 58(1)(d) of the MAC Act for assessment was made at least 3 months ago and the parties have not yet received a certificate certifying whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.
  - (4) The respondent must, within 21 days of registration of the application—
    - (a) lodge a reply to the application, and
    - (b) serve a sealed copy of the reply on the other parties.
  - (5) A claimant or insurer may lodge an application to refer a claim for further assessment if significant new evidence is produced in court proceedings after a claim has been assessed, in accordance with section 111 of the MAC Act, as soon as practicable after the evidence has been adduced.

### **93 Application for special assessment of certain disputes**

- (1) A claimant or insurer may lodge an application for special assessment of a dispute under section 96(1) of the MAC Act at any time.
- (2) A separate application must be lodged for each type of dispute specified in section 96(1) of the MAC Act.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.
- (4) The respondent must lodge a reply to the application and serve a sealed copy of the reply on the other parties—
  - (a) for an application for special assessment of a dispute about whether a payment is required to be made under section 84A of the MAC Act, as referred to in section 96(1)(f) of the MAC Act—within 14 days of registration of the application, or
  - (b) for an application for special assessment of another dispute specified in section 96(1) of the MAC Act—within 21 days of registration of the application.



- (5) An application for special assessment of a dispute about whether a payment is required to be made under section 84A of the MAC Act, as referred to in section 96(1)(f) of the MAC Act, must be allocated for assessment within 7 days of registration of the application.

## **Division 10.2 Motor accident proceedings under MAI Act**

### **94 Application for assessment of claim for damages**

- (1) A claimant or insurer may lodge either of the following applications within the period allowed by the PIC Act—
  - (a) an application for a certificate of exemption from assessment under section 7.34(2) of the MAI Act,
  - (b) an application to refer a claim for damages for assessment under section 7.32(1) of the MAI Act.
- (2) A claimant or insurer may lodge an application to refer a claim for further assessment if significant new evidence is produced in court proceedings after a claim has been assessed, in accordance with section 6.34 of the MAI Act, as soon as practicable after the evidence has been adduced.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.
- (4) The respondent to the application may, within 21 days of registration of the application—
  - (a) lodge a reply to the application, and
  - (b) serve a sealed copy of the reply on the other parties.

### **95 Application for approval of damages settlement**

- (1) If a claimant, who is not represented by an Australian legal practitioner, and an insurer have agreed to a proposed damages settlement, the insurer must lodge an application for approval of a damages settlement under section 6.23 of the MAI Act, on behalf of both the claimant and the insurer, within 7 days of reaching the agreement.
- (2) (Repealed)

### **96 Application for miscellaneous claims assessment**

- (1) A claimant or insurer may lodge an application to refer a dispute about a miscellaneous claims assessment matter under Part 7 of the MAI Act at any time.
- (2) An application may be lodged only if—

- (a) the insurer is not required to conduct an internal review of the decision as it relates to a dispute about which insurer is the insurer of the at-fault motor vehicle for the purposes of section 3.3 of the MAI Act, or
  - (b) the insurer has failed to complete an internal review or notify the claimant of the decision on review within the required period, or
  - (c) the insurer has declined to conduct an internal review.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.
- (4) The respondent may lodge a reply to the application and serve a sealed copy of the reply on the other parties—
- (a) for an application to refer a dispute about payment of statutory benefits that is a miscellaneous claims assessment matter specified in clause 3(b), (f) or (k) of Schedule 2 to the MAI Act—within 14 days of registration of the application, or
  - (b) for an application to refer a dispute about another miscellaneous claims assessment matter under clause 3 of Schedule 2 to the MAI Act—within 21 days of registration of the application.

#### **97 Persons under legal incapacity**

- (1) The appointed representative of a claimant who is a person under legal incapacity may make an application or refer a matter to the Commission, or carry on proceedings, under Part 7 of the MAI Act in the same way as the claimant could have done if not under a legal incapacity.

- (2) In this rule—

***appointed representative*** has the same meaning as in section 7.47 of the MAI Act.

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

### **Division 10.3 Motor accident proceedings generally**

#### **98 Application for mandatory exemption from claims assessment**

- (1) A claimant or insurer may apply for an exemption from assessment under section 92(1)(a) of the MAC Act or section 7.34(1)(a) of the MAI Act by lodging an application.
- (2) A separate application must be lodged for each claim that a party seeks to have exempted.
- (3) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.

- (4) The respondent to the application may, within 14 days of registration of the application—
  - (a) lodge a reply to the application, and
  - (b) serve a sealed copy of the reply on the other parties.

#### **99 Consideration of discretionary exemption from claims assessment**

- (1) A claimant or insurer may apply for an exemption from assessment under section 92(1)(b) of the MAC Act or section 7.34(1)(b) of the MAI Act by lodging an application.
- (2) In determining whether a claim is not suitable for assessment for the purposes of section 92(1)(b) of the MAC Act or section 7.34(1)(b) of the MAI Act, the Commission must consider the objects of the PIC Act and the circumstances of the claim.
- (3) Without limiting the matters that may be considered, the Commission may consider the following—
  - (a) whether the claim involves complex legal or factual issues, or complex issues in the assessment of the amount of the claim,
  - (b) whether the claim involves issues of liability, including contributory negligence, fault or causation,
  - (c) whether a claimant or witness, considered by the Commission to be a material witness, resides outside the State,
  - (d) whether a claimant or insurer seeks to proceed against one or more non-CTP parties,
  - (e) whether the insurer alleges that a person has made a false or misleading statement in a material particular in relation to the injuries, loss or damage sustained by the claimant in the accident giving rise to the claim.

#### **100 Schedule of damages**

- (1) If, in proceedings for a claim under the MAC Act or the MAI Act, the amount of damages is in dispute, the claimant must include in the application to commence proceedings a schedule of damages containing full particulars of the amount claimed.
- (2) If a party wishes to dispute the accuracy of a matter in the schedule of damages, the party must lodge and serve on the other parties a schedule of damages containing full particulars of the party's allegations of the damages.
- (3) The schedule of damages is to be lodged and served with the first document lodged and served by the party in the proceedings, in addition to the documents that must be lodged and served under rule 67.

- (4) A matter not disputed by a party under subrule (2) is deemed to be admitted by the party.
- (5) The claimant may lodge and serve a final schedule of damages at least 7 days before the assessment hearing.

### **101 Standing over of motor accident proceedings for assessment of damages**

- (1) This rule applies to motor accident proceedings for the assessment of damages.
- (2) The Commission may—
  - (a) direct in motor accident proceedings that the proceedings be stood over generally, and
  - (b) give further directions concerning the review of motor accident proceedings that have been stood over.
- (3) Unless the Commission orders differently, motor accident proceedings are taken to be discontinued on the expiry of the period referred to in paragraph (b) if—
  - (a) the proceedings have been stood over generally on terms allowing a party to restore the proceedings for hearing, and
  - (b) the proceedings have not been restored within the period of 6 months after the day on which the proceedings were stood over.
- (4) The President is to ensure that—
  - (a) a list is maintained of motor accident proceedings that have been stood over under this rule, and
  - (b) the list is managed in accordance with any applicable procedural directions.

## **Part 11 Medical assessment proceedings**

### **Division 11.1 Commencement of medical assessment proceedings**

#### **102 Application for medical assessment of treatment dispute**

- (1) A claimant or insurer may lodge an application for assessment of a treatment dispute, specified in section 58(1)(a) or (b) of the MAC Act as soon as practicable after the dispute arises.
- (2) An application may be lodged only if—
  - (a) the parties have attempted to resolve the dispute, and
  - (b) the parties have provided evidence that—

- (i) the claimant has requested specific treatment and the insurer disputes that the treatment is reasonable and necessary in the circumstances or that the treatment relates to the injury caused by the motor accident, and
- (ii) the insurer has had an opportunity to respond to the request from the claimant and has rejected the specific treatment requested by the claimant or not responded.

### **103 Application for medical assessment of permanent impairment dispute**

- (1) A claimant or insurer may lodge an application for assessment of a permanent impairment dispute as specified in section 58(1)(d) of the MAC Act—
  - (a) at any time, or
  - (b) if there is a dispute about whether or not the claimant is entitled to claim damages for non-economic loss in accordance with section 132(1) of the MAC Act—as soon as practicable after the dispute arises.
- (2) An application may be lodged only if the parties have attempted to resolve the dispute, including a dispute about whether or not the claimant is entitled to claim damages for non-economic loss.
- (3) An application may be lodged only if the parties have provided evidence that—
  - (a) the claimant has given notice to the insurer that the claimant believes the claimant is entitled to damages for non-economic loss, by—
    - (i) making a request or offer of settlement to the insurer that seeks an entitlement to damages for non-economic loss, or
    - (ii) requesting that the insurer concede that the claimant is entitled to claim damages for non-economic loss, or
    - (iii) notifying the insurer that they believe their degree of whole person impairment is greater than 10%, and
  - (b) the insurer has had an opportunity to respond to the claimant's claim and has rejected the claim or not responded.

### **104 Application for further medical assessment**

A claimant or insurer may lodge an application for further assessment of a medical dispute, if an injury has deteriorated or there is additional relevant information, under section 62(1)(a) of the MAC Act, only if—

- (a) the dispute has previously been assessed by a medical assessor, and
- (b) all certificates required to be issued in relation to the dispute have been issued, and

- (c) the time for lodging an application to correct an obvious error, or an application for review, in relation to the original assessment of the medical dispute, has expired, and
- (d) an application to correct an obvious error, or an application for review, in relation to the original assessment of the medical dispute, if made, has been determined.

### **105 Application for assessment of medical dispute**

- (1) A claimant or insurer may lodge an application to refer a medical dispute for assessment under Division 7.5 of the MAI Act—
  - (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.
- (2) An application may be lodged only if—
  - (a) the insurer has failed to complete an internal review or notify the claimant of the decision on review within the required period, or
  - (b) the insurer has declined to conduct an internal review.
- (2A) Subrules (1) and (2) do not apply to a medical dispute about the degree of permanent impairment of the injured person that has resulted from injury caused by the motor accident.
- (2B) A claimant or insurer may lodge an application to refer a medical dispute of the kind specified in subrule (2A) for assessment under Division 7.5 of the MAI Act at any time.
- (3) If an injury has not previously been the subject of a medical assessment, an application for further assessment of a medical dispute is not required and an original application to refer a medical dispute for assessment may be made in relation to the injury.

### **106 Service of applications and replies**

- (1) An applicant making an application specified in this Part must, within 7 days of registration of the application, serve a sealed copy of the application on the respondent and the other parties.
- (2) Subject to subrule (3), the respondent must, within 21 days of registration of the

application—

(a) lodge a reply to the application, and

(b) serve a sealed copy of the reply on the other parties.

(3) The respondent in an application referred to in rule 105 may lodge a reply to the application—

(a) for an application for further assessment of a medical dispute, as referred to in section 7.24 of the MAI Act—within 21 days of registration of the application, or

(b) for an application to refer a medical assessment to a review panel for review, as referred to in section 7.26 of the MAI Act—within 21 days of registration of the application, or

(c) for an application to refer a dispute about a non-binding opinion of a medical assessor, as referred to in section 7.27 of the MAI Act—within 21 days of registration of the application, or

(d) for an application to refer a dispute about a medical assessment matter specified in clause 2 of Schedule 2 to the MAI Act—within 21 days of registration of the application.

(4) If the President, a merit reviewer or a court refers a dispute for assessment, all parties are taken to be respondents and may lodge a reply within 21 days of the date on which the referral was made.

## **Division 11.2 Conduct of medical assessment proceedings**

### **107 Application of Part 5 of PIC Act**

(1) The following provisions of Part 5 of the PIC Act apply in relation to medical assessment proceedings with the modifications specified by subrules (2) and (3)—

(a) section 42 (Guiding principle to be applied to practice and procedure),

(b) section 46 (Service of documents outside the State),

(c) section 54 (Dismissal of proceedings).

#### **Note—**

Section 41(2) of the PIC Act enables the Commission rules to make provision for the application of Part 5 of the PIC Act, whether with or without modification, to proceedings before a medical assessor.

(2) A function given to the Commission in section 42 of the PIC Act is to be read as being given to the medical assessor conducting the medical assessment proceedings.

(3) A function given to the Commission in section 46 or 54 of the PIC Act is to be read as

being given to the President.

- (4) This rule has effect subject to any different procedure provided by these Rules for the medical assessment proceedings.

### **108 Conduct of medical assessment proceedings**

- (1) The President may determine the procedure for medical assessment proceedings.
- (2) Medical assessment proceedings may be conducted—
- (a) in person, or
  - (b) by telephone or audiovisual link, or
  - (c) by other means determined by the President to be appropriate in the circumstances.
- (3) A party to the proceedings may object to the way in which medical assessment proceedings are to be conducted by giving written notice of the objection, with reasons for the objection, to the President as soon as practicable after being notified of the way in which the medical assessment proceedings are to be conducted.

### **109 Surveillance recordings**

- (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.

- (3) The claimant may file a response addressing the surveillance recording within 7 days of the date on which the surveillance recording was served on the claimant.
- (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).

#### **110 Entitlement to support person**

- (1) If the person being assessed in medical assessment proceedings is a person under legal incapacity, the person is entitled to have a support person present during the proceedings, including—
- (a) the person's parent, carer or legal guardian, or
- (b) the person's tutor or next friend, or
- (c) another support person or personal representative.
- (2) If the person being assessed is not a person under legal incapacity, the medical assessor may allow a support person to be present during the assessment if the medical assessor—
- (a) considers it reasonable in the circumstances, and
- (b) has explained to the support person that the support person may only answer a question if the medical assessor directs.
- (3) For the purposes of this rule, the following are not able to act as a support person—
- (a) a legal or union representative,
- (b) a treating medical or health practitioner of the person being assessed.
- (4) In this rule—

***person under legal incapacity*** has the same meaning as in section 7.47 of the MAI Act.

#### **111 Medical assessment certificate for multiple assessments of permanent impairment**

- (1) If different medical assessors are required to conduct different assessments of permanent impairment, the President is to appoint a lead assessor.

- (2) The President is to inform the medical assessors selected to undertake the assessments as to who is the lead assessor.
- (3) An assessor who is not the lead assessor must provide the assessor's assessment to the lead assessor.
- (4) The lead assessor must consolidate the lead assessor's assessment with the assessments of other assessors for the purposes of giving—
  - (a) a combined certificate under section 61 of the MAC Act or section 7.23 of the MAI Act, or
  - (b) a medical assessment certificate under section 325 of the 1998 Act.

#### **112 Correction of incomplete certificate**

- (1) The Commission may refer a matter back to a medical assessor or panel if the assessor or panel provides an incomplete certificate to allow the assessor or panel to correct the certificate.

- (2) In this rule—

***incomplete certificate*** means a certificate that fails to comply with—

- (a) section 61 of the MAC Act, or
- (b) section 7.23 of the MAI Act.

#### **113 Recording of medical assessment proceedings**

Medical assessment proceedings may not be recorded by any person unless the President, the medical assessor and the claimant all consent to it.

### **Part 12 Merit review proceedings**

#### **114 Application of Part 5 of PIC Act**

- (1) The following provisions of Part 5 of the PIC Act apply in relation to merit review proceedings with the modifications specified by subrules (2) and (3)—
  - (a) section 42 (Guiding principle to be applied to practice and procedure),
  - (b) section 43 (Procedure before Commission generally),
  - (c) section 46 (Service of documents outside the State),
  - (ca) section 47 (Intervention by Authority),
  - (d) section 54 (Dismissal of proceedings).

**Note—**

Section 41(2) of the PIC Act enables the Commission rules to make provision for the application of Part 5 of the PIC Act, whether with or without modification, to proceedings before a merit reviewer.

- (2) A function given to the Commission in section 42 or 43 of the PIC Act is to be read as being given to the merit reviewer conducting the merit review proceedings.
- (3) A function given to the Commission in section 46 or 54 of the PIC Act is to be read as being given to the President.
- (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.
- (4) This rule has effect subject to any different procedure provided by these Rules for the merit review proceedings.

### **115 Application for merit review**

- (1) A claimant may apply for a merit review of a reviewable decision under the MAI Act by lodging an application in the approved form.
- (2) An application for a merit review matter for which an internal review is required by the insurer may be made only after—
  - (a) the reviewable decision has been the subject of an internal review by the insurer, or
  - (b) the insurer has failed to complete an internal review or notify the claimant of the internal review decision within the period required for its completion, or
  - (c) the insurer has declined to conduct an internal review.
- (3) An application for a merit review must be lodged—
  - (a) if an internal review is required by the insurer, within 28 days of—
    - (i) the claimant receiving the insurer's internal review of the reviewable decision, or
    - (ii) the claimant receiving the insurer's decision to decline to conduct the internal review, or
    - (iii) the end of the period required under section 7.9(4) or (5) of the MAI Act, if the insurer has not completed the internal review or notified the claimant of the outcome within the required period, or
  - (b) if an internal review is not required by the insurer, within 28 days of the claimant receiving the insurer's reviewable decision.
- (4) An application must also include a schedule of earnings as referred to in rule 68 if the amount of weekly compensation or statutory benefits is in dispute.

- (5) The claimant must, within 7 days of registration of the application, serve a sealed copy of the application on the other parties.
- (6) The insurer may, within 14 days of registration of the application—
  - (a) lodge a reply to the application, and
  - (b) serve a sealed copy of the reply on the other parties.

#### **116 Conduct of merit review proceedings**

- (1) The President may determine the procedure for merit review proceedings, including whether the proceedings are to be conducted in person, by telephone or audiovisual link or without a conference.
- (2) Subject to any determination by the President, a merit reviewer may determine the procedure for the merit review proceedings and may inquire into any matter relevant to the issues in dispute.
- (3) A party to the proceedings may object to the way in which merit review proceedings are to be conducted under this rule, by giving written notice of the objection, with reasons for the objection, to the President or the merit reviewer as soon as practicable after being notified of the way in which the proceedings are to be conducted.

#### **117 Statement of reasons for decision of insurer**

A merit reviewer may require an insurer to provide a statement of reasons for a reviewable decision, together with supporting documents, to the claimant and the merit reviewer, in a form and within a period specified by the merit reviewer.

#### **118 Assessment of legal costs for merit review**

A merit reviewer may include an assessment of the legal costs for a merit review matter arising in a statutory benefits claim in the certificate of determination and statement of reasons issued under section 7.13(4) of the MAI Act.

### **Part 13 Appeals and reviews**

#### **Division 13.1 Referral of questions of law to Commission**

##### **119 Application of Division**

- (1) This Division applies in relation to a referral to the Commission constituted by the President under section 351 of the 1998 Act (a **workers compensation question of law referral**) of a question of law in Commission proceedings before a non-presidential member.
- (2) A workers compensation question of law referral may be made only if a certificate of determination has not been issued for the Commission proceedings before the non-

presidential member.

### **120 Application by party for workers compensation question of law referral**

- (1) A party to Commission proceedings before a non-presidential member may apply for a workers compensation question of law referral by lodging in the Commission an application and serving it on the Authority and the other parties.
- (2) The application must include or attach full details of the question of law and the reasons for seeking the referral, including the reasons why it is alleged that the question involves a novel or complex question of law as referred to in section 351(3) of the 1998 Act.
- (3) If a party seeks to oppose the application, the party must, within 14 days of being served with the application, lodge a notice of opposition in the Commission and serve the notice on the Authority and the other parties.
- (4) A notice of opposition must include or attach full details of the reasons for opposing the application.
- (5) If a party wishes to object to the matter of leave to refer the question of law being decided solely on the basis of the written application and any written notice of opposition lodged, the party must state the objection, including the reasons for the objection in full, in the application or in the notice of opposition lodged by the party.
- (6) If the non-presidential member, on the application of a party, seeks leave to refer a question of law under section 351 of the 1998 Act, the member must give to the President—
  - (a) the application, and
  - (b) any notice of opposition served on the member, and
  - (c) a statement of the question of law that the member wishes to be considered by the President.

### **121 Referral on non-presidential member's own motion**

- (1) This rule applies if a non-presidential member decides, of the member's own motion, to seek leave from the President under section 351 of the 1998 Act for a workers compensation question of law referral.
- (2) The non-presidential member must, as soon as practicable, give to the President notice of the decision including or attaching full details of the question of law and the reasons for seeking leave, including the reasons why it is alleged that the question involves a novel or complex question of law as referred to in section 351(3) of the 1998 Act.

- (3) If the non-presidential member decides not to make an award under section 351(5) of the 1998 Act in the matter in which the question being referred arose, the member must give to the President a notice of the decision including or attaching the reasons for the decision.
- (4) The President must, as soon as practicable, give to the parties a copy of a notice given to the President under this rule.

## **Division 13.2 Workers compensation dispute appeals to Commission**

### **122 Application of Division**

- (1) This Division applies in relation to an appeal under section 352 of the 1998 Act (a **workers compensation dispute appeal**) against a decision of a non-presidential member about a dispute in connection with a claim for compensation.
- (2) For the purposes of section 352(4) of the 1998 Act, a decision is made about a dispute when the Commission issues a certificate as to the determination of the dispute under section 294(1) of the 1998 Act.

### **123 Application for workers compensation dispute appeal**

- (1) An application for a workers compensation dispute appeal must—
  - (a) attach a copy of the certificate as to the determination of the dispute under section 294(1) of the 1998 Act, and
  - (b) include or attach full details of—
    - (i) the grounds for and the arguments in support of the grounds for the appeal and, if necessary, arguments in support of leave to appeal an interlocutory decision, and
    - (ii) for the purposes of section 352(3) of the 1998 Act, the amount of compensation alleged to be at issue on the appeal, and
    - (iii) whether the appeal has been made within the time provided by section 352(4) of the 1998 Act, and

**Note—**

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

- (iv) any new evidence in relation to which leave is to be sought, by the party lodging the application, in accordance with section 352(6) of the 1998 Act, and
- (v) if the applicant wishes to object to the appeal being decided solely on the basis of the written application and any written notice of opposition lodged—the reasons for the objection, and

- (vi) an objective chronology of the key events leading up to the commencement of the proceedings, which is not limited to matters that assist the party preparing it.
- (2) The applicant must, within 7 days of registration of the application, serve a sealed copy of the application, including attachments, on—
- (a) the other parties to the proceedings, and
  - (b) if any of the other parties is an employer that is not a self-insurer—the employer’s insurer.

#### **124 Notice of opposition**

- (1) A party who seeks to oppose an application for a workers compensation dispute appeal must, within 28 days of being served with the application, lodge a notice of opposition.
- (2) A notice of opposition must include or attach full details of—
- (a) the grounds for and arguments in support of opposing the appeal and, if necessary, arguments in opposition to the granting of leave to appeal an interlocutory decision, and
  - (b) for the purposes of section 352(3) of the 1998 Act, the amount of compensation alleged to be at issue in the appeal, and
  - (c) any new evidence in relation to which leave is to be sought, by the party lodging the notice of opposition, in accordance with section 352(6) of the 1998 Act, and
  - (d) if the party lodging the notice wishes to object to the appeal being decided solely on the basis of the written application and any written notice of opposition lodged—the reasons for the objection.
- (3) The party opposing the application must serve a sealed copy of the notice of opposition on the other parties.
- (4) The party opposing the application may lodge an alternative or supplementary chronology of key events to the chronology filed by the appellant.

#### **125 Notice of contention and reply**

- (1) The respondent must file a notice of contention if the respondent—
- (a) wishes to contend that the decision to which a workers compensation dispute appeal relates should be affirmed on grounds other than those relied on by the non-presidential member, and
  - (b) does not seek a discharge or variation of any part of the decision.

- (2) The notice of contention must—
  - (a) be lodged and a sealed copy served on the other parties to the proceedings at the same time as the notice of opposition in the proceedings is lodged and served, and
  - (b) state, briefly but specifically, the grounds relied on and submissions in support of the contention.
- (3) The appellant may, within 14 days of service of the notice of opposition and notice of contention—
  - (a) lodge submissions in reply to the notice of opposition and the notice of contention, and
  - (b) serve a sealed copy of the submissions on the other parties.

#### **126 Non-compliance with procedural requirements**

- (1) The President may, as an alternative to refusing to accept, seal, issue or register a document for use in a workers compensation dispute appeal, give a direction to a party to rectify non-compliance with procedural requirements for the appeal.
- (2) The appeal is not to proceed further until the President is satisfied the appeal is procedurally compliant.

### **Division 13.3 Panel review proceedings**

#### **127 Application of Part 5 of PIC Act**

- (1) The following provisions of Part 5 of the PIC Act apply in relation to panel review proceedings with the modifications specified by subrules (2) and (3)—
  - (a) section 42 (Guiding principle to be applied to practice and procedure),
  - (b) section 43 (Procedure before Commission generally),
  - (c) section 46 (Service of documents outside the State),
  - (ca) section 47 (Intervention by Authority),
  - (d) section 54 (Dismissal of proceedings).

#### **Note—**

Section 41(2) of the PIC Act enables the Commission rules to make provision for the application of Part 5 of the PIC Act, whether with or without modification, to proceedings before a panel under enabling legislation determining an appeal against, or a review of, a decision of a merit reviewer or medical assessor.

- (2) A function given to the Commission in section 42 or 43 of the PIC Act is to be read as being given to the panel conducting the panel review proceedings.



- (3) A function given to the Commission in section 46 or 54 of the PIC Act is to be read as being given to the President.
- (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.
- (4) This rule has effect subject to any different procedure provided by these Rules for the panel review proceedings.

**128 Conduct of panel review proceedings**

- (1) A panel for panel review proceedings is to conduct and determine the proceedings in accordance with procedures determined by the panel.
- (2) A panel may determine the proceedings solely on the basis of the written application.
- (3) A panel may also arrange for the proceedings, including medical examinations for the proceedings, to be conducted—
  - (a) in person, or
  - (b) by telephone or audiovisual link, or
  - (c) by other means determined by the President to be appropriate in the circumstances.
- (4) A panel is not bound by the rules of evidence.
- (5) A panel may inquire into matters that are relevant to the issues in dispute as the panel thinks fit.
- (6) A determination of the majority of panel members is taken to be the determination of the panel.

**129 Applications for appeals and reviews**

- (1) This rule applies to the following applications—
  - (a) an appeal against a medical assessment under section 327 of the 1998 Act,
  - (b) an application to refer a medical assessment to a review panel under section 63 of the MAC Act,
  - (c) an application to refer a decision of a single merit reviewer to a review panel under section 7.15 of the MAI Act,
  - (d) an application to refer a medical assessment to a review panel under section 7.26 of the MAI Act.
- (2) An application is to be made by lodging an application in the approved form.

**Note—**

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

- (3) The applicant must, within 7 days of lodging the application, serve a sealed copy of the application on the other parties.
- (4) The respondent may lodge and serve a sealed copy of the reply in the approved form within—
  - (a) for an application specified in subrule (1)(a), (b) or (d)—21 days of being served with the application, or
  - (b) for an application specified in subrule (1)(c)—14 days of being served with the application.
- (5) If the President, a merit reviewer or a court refers a medical dispute, which has previously been assessed, for review by a panel under the MAC Act or the MAI Act, both parties are taken to be respondents and may lodge a reply within 21 days of the date on which the referral was made.

**130 Certificate of determination under MAI Act**

A review panel under section 7.26 of the MAI Act must, as soon as practicable after conducting a review, issue a certificate of determination to the parties that includes the reasons for the determination.

**Part 14 Miscellaneous**

**131 Publication of decisions**

- (1) Subject to rule 132, the details of a decision required to be published by section 58 of the PIC Act are to be published—
  - (a) on the Commission website or in another location directed by the President, and
  - (b) no earlier than 7 days after the decision is issued.
- (2) Subrule (1)(b) does not prevent a decision being published within the period of 7 days after the decision is issued if the President, with the consent of the parties, so directs.

**132 De-identification or redaction of publishable decisions**

- (1) The Commission or the President may, of their own motion or on the application of a relevant person, direct either or both of the following—
  - (a) that all or part of a publishable decision be de-identified before it is published,
  - (b) that part of a publishable decision be redacted before it is published.

- (2) An application for a direction may be made during, or after the completion of, the proceedings in which the publishable decision is issued.
- (3) An application for a direction is to be made to—
  - (a) for proceedings being heard by the Commission that have not been completed—the Commission, or
  - (b) for other proceedings that have not been completed—the President, or
  - (c) for proceedings that have been completed—the President within 7 days after the publishable decision is issued.
- (4) In determining an application for a direction, the Commission or the President is to have regard to the following matters—
  - (a) the objects of the PIC Act and enabling legislation and, in particular, the object that the Commission be open and transparent about its processes,
  - (b) the prevention of prejudice to the proper administration of justice,
  - (c) the safety, health and wellbeing of a person affected or named by the publishable decision,
  - (d) the views of any other party to the proceedings,
  - (e) whether it is necessary in the public interest for the direction to be given and whether the public interest in giving the direction significantly outweighs the public interest in open justice.
- (5) If the Commission grants an application for a direction under subrule (3)(a), the President may, despite the direction of the Commission, direct that the publishable decision be published without the de-identifications or redactions directed by the Commission or with different de-identifications or redactions.
- (6) In this rule—

***publishable decision*** means a decision details of which are required to be published by section 58 of the PIC Act.

***relevant person***, in relation to an application for a direction, means—

- (a) a party to the proceedings in which the publishable decision is made, or
- (b) a person named in the publishable decision, or
- (c) another person the Commission or the President considers to have a sufficient interest to make the application.

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

- (1) This rule applies to a party to Commission proceedings seeking to have an amount ordered by the Commission certified by the principal registrar under section 59 of the PIC Act.
- (2) A party may apply for a certificate by lodging a statutory declaration containing and verifying a statement of the following—
  - (a) the date of the order,
  - (b) the amount of money originally payable under the order,
  - (c) the amount of costs originally payable under the order, if the amount has been fixed,
  - (d) the total amount, if any, paid by the debtor under the order in reduction of the amount payable,
  - (e) the total amount of any credits accrued in reduction of the amount payable otherwise than by payment,
  - (f) the amount or amounts on which, and the date or dates from which, the party claims to be entitled to interest on the amount payable,
  - (g) other particulars, if any, that are necessary to calculate the balance payable under the order,
  - (h) the amount payable under the order on the date of making the statutory declaration,
  - (i) the full name, and the address of the place of residence or business, of the debtor under the order,
  - (j) whether the dispute is the subject of appeal under section 352 or 353 of the 1998 Act.
- (3) A statutory declaration may not be lodged if it is made more than 14 days before the day on which it is submitted for lodging.
- (4) The amount certified by the principal registrar must not exceed the amount verified in accordance with subrule (2)(h).

### **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).

**134 Savings**

An act, matter or thing that, immediately before the repeal of the *Workers Compensation*

*Commission Rules 2011*, had effect under those Rules is taken to have effect under these Rules.

**Note—**

The *Workers Compensation Commission Rules 2011* were repealed on the establishment day by section 67 of the PIC Act.

## Dictionary

rule 4

**applicable proceedings**—see rule 5.

**appropriate decision-maker**—

- (a) for Part 6—see rule 59, or
- (b) for Part 7—see rule 65, or
- (c) for Part 8—see rule 72.

**approved form**, in relation to a document, means a form approved for the document by the President under rule 16.

**Commission proceedings**—see rule 5.

**Commission website** means—

- (a) the website with the URL of [www.pi.nsw.gov.au](http://www.pi.nsw.gov.au), or
- (b) another website that the President has directed for use by the Commission as its website.

**day** means a calendar day unless differently stated.

**ECM system** means an electronic case management system established for the Commission under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

**lodge** means lodge with the Commission and, for the purposes of the *Electronic Transactions Act 2000*, includes filing a document by an ECM system.

**mediation proceedings**—see rule 5.

**medical assessment proceedings**—see rule 5.

**merit review proceedings**—see rule 5.

**motor accident proceedings** means Commission proceedings allocated to the Motor Accidents Division of the Commission.

**non-working day** means a day other than a working day.

**originating process** means the document by which proceedings are commenced.

**panel review proceedings**—see rule 5.

**procedural requirements**, in relation to Commission proceedings or an originating process, means requirements applicable to the proceedings or process under the PIC Act, the PIC regulations, these Rules, enabling legislation or the procedural directions.

**Registry** means the Registry of the Commission.

**sealed**, in relation to a document, means the document has had the seal of the Commission applied to it.

**the 1987 Act** means the [Workers Compensation Act 1987](#).

**the 1998 Act** means the [Workplace Injury Management and Workers Compensation Act 1998](#).

**the MAC Act** means the [Motor Accidents Compensation Act 1999](#).

**the MAI Act** means the [Motor Accident Injuries Act 2017](#).

**the PIC Act** means the [Personal Injury Commission Act 2020](#).

**the PIC regulations** means regulations under the PIC Act.

**workers compensation dispute appeal**—see rule 122.

**workers compensation proceedings** means Commission proceedings allocated to the Workers Compensation Division of the Commission.

**workers compensation question of law referral**—see rule 119.

**working day** means a day that is not a Saturday, Sunday or public holiday.