

Workers Compensation Commission Rules 2003

[2003-448]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Note**

The Rules were repealed by rule 1.3 (1) of the *Workers Compensation Commission Rules 2006 (658)* (GG No 129 of 27.10.2006, p 9231) with effect from 1.11.2006.

Authorisation

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

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Workers Compensation Commission Rules 2003



New South Wales

I, John Della Bosca, Minister for Commerce, do by this my Order make the following Rules of the Workers Compensation Commission in pursuance of the [Workplace Injury Management and Workers Compensation Act 1998](#).

JOHN DELLA BOSCA, M.L.C., Minister for Commerce

Part 1 Preliminary

1 Name of Rules

These rules are the [Workers Compensation Commission Rules 2003](#).

2 Commencement

These rules commence on 1 July 2003.

3 Repeal and transitional

- (1) The [Interim Workers Compensation Commission Rules 2001](#) are repealed.
- (2) Subject to these rules, these rules apply to proceedings commenced before or after the commencement of these rules.
- (3) A step taken in any proceedings in accordance with the [Interim Workers Compensation Commission Rules 2001](#) before the commencement of these rules is as valid as it would have been if taken in accordance with these rules.

4 Interpretation

- (1) In these rules:

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

day means calendar day unless otherwise stated.

electronic communication means:

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both, or

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

lodge means lodge with the Commission.

party means a party to proceedings.

proceedings means proceedings in the Commission.

respondent means a person who is a party to a dispute other than the applicant.

sealed means affixed with the seal of the Commission.

Workers Compensation Acts means the 1987 Act and the 1998 Act.

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

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

- (2) Words and expressions used in these rules have the same meanings as they have in the Workers Compensation Acts unless the context or subject-matter otherwise indicates or requires.
- (3) When these rules provide for notice to be given, that notice is to be given in writing unless otherwise specified. Notice in writing includes notice given by electronic communication in accordance with these rules.
- (4) A reference in these rules to the Commission includes a reference to the Registrar or any other member of the Commission.

5 Procedure wanting or in doubt

- (1) If a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by the Workers Compensation Acts or these rules, or by or under any other Act, or the person is in doubt as to the manner or form of procedure, the Commission may, on application by the person or of its own motion, give directions.
- (2) Proceedings commenced in accordance with the directions of the Commission are taken to be properly commenced.
- (3) A step taken in accordance with the directions of the Commission is taken to be regular and sufficient.
- (4) An application for directions under this rule may be made whether or not proceedings have been commenced.

6 Adherence to and relief from rules

- (1) Subject to subrule (2) and to rule 5, the practice in the Commission is to be the practice provided by the Workers Compensation Acts or these rules.
- (2) The Commission may if it thinks fit on terms dispense with compliance with any of the requirements of these rules, either before or after the occasion for the compliance arises.
- (3) The general practice of the Commission prescribed by these rules applies to all proceedings authorised by any existing or future Act to be commenced, taken or continued in the Commission, except in so far as that practice is inconsistent with any provision of or under any such Act.
- (4) If a provision of these rules is not complied with in relation to the commencement (or purported commencement) of proceedings or conduct of proceedings, the Commission may determine that the proceedings are, or any step taken in the proceedings is, a nullity, in which case the Commission may strike out the proceedings or any such step.
- (5) If the Commission does not make a determination as referred to in subrule (4) in respect of a failure to comply with a provision of these rules, the failure is to be treated as an irregularity only.
- (6) For the avoidance of doubt, it is declared that the Registrar may exercise the Commission's functions referred to in subrule (4).
- (7) The striking out of proceedings under this rule does not prevent the proceedings from being recommenced.

Part 2 Administration

7 Registry

- (1) The Commission is to maintain a Registry.
- (2) The Registry is to be under the direction and control of the Registrar, subject to the general control and direction of the President.

8 Location of Registry

- (1) The address of the Registry is:
 - (a) for the purpose of delivery of documents:

Workers Compensation Commission Registry
Level 4, 1 Oxford Street
Darlinghurst NSW 2010

(b) for the purpose of sending documents or correspondence:

(i) by post:

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

(ii) by document exchange (DX):

The Registrar
Workers Compensation Commission Registry
DX 11524 Sydney Downtown

(iii) by facsimile transmission (fax):

The Registrar
Workers Compensation Commission Registry
1300 368 018

(iv) by electronic communication (email):

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

(2) The Registrar may vary the address, for any of the purposes mentioned in subrule (1), of the registry by advertising the varied address at appropriate times and in an appropriate manner.

9 Hours of business

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

10 Registers

(1) The Registry is to maintain the following:

- (a) a register of approved medical specialists appointed by the President pursuant to section 320 of the 1998 Act,
- (b) a register of all current proceedings,
- (c) a register of arbitrators and mediators,
- (d) a register of all lump sum agreements registered in accordance with section 66A of the 1987 Act.

(2) Public access to the registers referred to in subrule (1) is as follows:

- (a) the registers of approved medical specialists, arbitrators and mediators and

register of current proceedings are to be available for inspection by the general public on the Internet site of the Commission at <http://www.wcc.nsw.gov.au> or in such other manner and at such times as are determined by the Registrar from time to time,

- (b) the register of lump sum agreements is to be available for inspection by the persons and at the times determined by the Registrar from time to time.

11 Seal

- (1) The Commission is to have a seal.
- (2) The seal is to be in such form (including electronic form) as the President may determine from time to time.
- (3) The seal is to be kept under the control of the Registrar at all times.
- (4) The seal is to be affixed to all documents registered by the Commission and to all notices and certificates of decisions and determinations by the Commission and to such other documents as may be prescribed in these rules or as the President may determine from time to time.

Part 3 Time

12 Fixing of time

Where no time is fixed by the Workers Compensation Acts, or these rules, or by a Practice Direction, or by any decision or order of the Commission in any proceedings, for the doing of any thing in or in connection with the proceedings, the Commission may, by order, fix the time within which the thing is to be done.

13 Extension and abridgment of time

- (1) The Commission may by order extend or abridge any time fixed by these rules or under Part 9 of Chapter 7 of the 1998 Act.
- (2) For the avoidance of doubt, it is declared that the functions of the Commission under subrule (1) may be exercised by the Registrar.
- (3) The Commission 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 abridge that period.

14 Running of time

Time does not run in respect of any proceedings during such period as may be fixed by order of the Commission in the proceedings or by a Practice Direction.

15 Time of commencement of proceedings

The time of commencement of proceedings is the time when the Registrar registers the application to resolve a dispute (or other document lodged for the commencement of the proceedings) by affixing the seal of the Commission.

Part 4 Documents generally

16 Form of documents

- (1) The President may approve forms for use in the Commission and a reference in these rules to an approved form is a reference to a form approved by the President.
- (2) Every document lodged at or served on the Registry must:
 - (a) be headed so as to identify clearly the proceedings to which the document relates and the nature and purpose of the document, and
 - (b) be in the approved form and otherwise in substantial compliance with these rules, any Practice Direction, and any directions issued by the Registrar, and
 - (c) be clearly written, typed or reproduced.
- (3) For the purpose of determining whether a document is in the approved form, it is sufficient compliance with any requirement as to the form of a document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.
- (4) Where no form has been approved under this rule in respect of a document to be lodged, the document is to be drafted to the satisfaction of the Registrar.
- (5) The Registrar may refuse to accept, file, seal, or issue any document that, in the opinion of the Registrar, contravenes this rule.
- (6) Without limiting subrule (5), the Registrar may refuse to register an incomplete or otherwise defective application to resolve a dispute, or for an expedited assessment or interim payment direction.
- (7) A new application to resolve a dispute, or for an expedited assessment or interim payment direction, may be lodged at any time if the Registrar has previously refused to register an incomplete or otherwise defective prior application.

17 Amendment of documents

- (1) The Commission may, on the application of a party to any proceedings before the Commission, give the party leave to amend any document filed by the party in the proceedings if the Commission considers the amendment to be necessary for the avoidance of injustice.

- (2) Such an amendment may be made at any stage of the proceedings (including the commencement or purported commencement of the proceedings), and on such terms as the Commission thinks fit.
- (3) Where the Commission gives leave to amend a document the Commission may give directions as to the conduct of the proceedings consequent on the amendment, and any such direction must be complied with as though it were a provision of these rules.
- (4) Subrule (1) does not extend to allow amendment of any information or document required by rule 38 (1), 40 (1), 42 (1) or 44 (2) to be lodged.

(5) Where the amendment for which leave is sought:

(a) is of a minor nature and will not have any substantive effect on the case to be put by any party, or

(c) is consented to by all parties to the proceedings,

the Registrar (or, if the proceedings have been referred to an Arbitrator and remain so referred, the Arbitrator) may give the party applying leave to make the amendment without complying with the provisions of subrule (6) or (7) (as the case may be).

(6) Subject to subrule (5), where a party in any proceedings applies for leave to amend as referred to in subrule (1) before the proceedings are referred to an Arbitrator, the following provisions apply:

(a) the application must be in writing and must fully set out the grounds for the application,

(b) the party applying must serve the application on all other parties to the proceedings and lodge the application with the Registrar with a certificate certifying that service,

(c) a party to the proceedings who wishes to object to the amendment must serve on the party applying, and lodge with the Registrar, written notice of the reasons for the objection within 2 working days of being served with the application,

(d) subject to paragraph (f) (iii), the Registrar must determine an application lodged under paragraph (b),

(e) the Registrar may determine an application lodged under paragraph (b) solely on the basis of the written application and the written notice of objection (if any),

(f) without limiting paragraph (e), when considering an application lodged under paragraph (b) the Registrar may do any of the following:

(i) seek further oral or written information from the parties to the proceedings,

(ii) list the application for hearing before the Registrar,

(iii) refer the application to an Arbitrator for determination.

- (7) Subject to subrule (5), where a party to any proceedings applies for leave to amend as referred to in subrule (1) after the proceedings are referred to an Arbitrator, the following provisions apply:
- (a) the application must be in writing and must fully set out the grounds for the application,
 - (b) the party applying must serve the application on all other parties to the proceedings, and lodge the application with the Registrar with a certificate certifying that service,
 - (c) a party to the proceedings who wishes to object to the amendment must serve on the party applying, and lodge with the Registrar, written notice of the reasons for the objection within 2 working days of being served with the application,
 - (d) the Arbitrator must determine an application lodged under paragraph (b),
 - (e) the Arbitrator may determine an application lodged under paragraph (b) solely on the basis of the written application and the written notice of objection (if any),
 - (f) without limiting paragraph (e), when considering an application lodged under paragraph (b) the Arbitrator may do any of the following:
 - (i) seek further oral or written information from the parties to the proceedings or any of them,
 - (ii) list the application for hearing before the Arbitrator.

Part 5 Representation

18 Notice of representation

- (1) A party to proceedings must notify the Registrar and the other parties of the appointment at any stage in the proceedings of a legal practitioner or agent to represent the party, within 7 days of the appointment.
- (2) If at any stage in proceedings a party changes the legal practitioner or agent by whom the party is represented, the party must notify the Registrar and the other parties of that change within 7 days.
- (3) If at any stage in proceedings a legal practitioner or agent representing a party ceases to represent the party, the legal practitioner or agent must so notify the Registrar and the other parties within 7 days.
- (4) If the legal practitioner or agent is to represent the party from the commencement of proceedings, the notice required under subrule (1) is deemed to be given if the legal

practitioner or agent signs the first document lodged on behalf of the party in the proceedings and gives in that document the address of the legal practitioner or agent as the party's address for service.

- (5) A notice under this rule must indicate whether the authority of the legal practitioner or agent to act on behalf of the party in the proceedings is limited or restricted in any way and, if so, in what manner and to what extent, and unless the notice contains such an indication the Registrar is entitled to assume that the authority is not limited or restricted.
- (6) A notice required under this rule to be given by a party may be given by the party's legal representative or agent.

Part 6 Service

19 Service of documents by or on Commission

- (1) All documents required or permitted to be filed or lodged in or with, or issued by, the Commission must be filed or lodged at, or issued from, the Registry.
- (2) Subject to subrule (5), filing or lodging of documents with, or issuing or service of documents by, the Commission may be by means of hand delivery, post, document exchange (DX), facsimile transmission (fax) or electronic communication, in accordance with these rules and the Workers Compensation Acts.
- (3) Subject to subrule (5), a document may be served on the Commission, and correspondence directed to the Commission may be forwarded to the Commission:
 - (a) by hand, by delivering it to the Commission at the Registry, or
 - (b) by post, by sending it by prepaid post to the postal address set out in, or varied under, rule 8, or
 - (c) by DX, by leaving it in the DX box set out in, or varied under, rule 8 or in another DX box for transmission to that DX box, or
 - (d) by fax, by faxing it to the fax number set out in, or varied under, rule 8 and receiving notification on the sending facsimile machine of a successful transmission, or
 - (e) by electronic communication, by sending an electronic communication of the document or correspondence to the email address set out in, or varied under, rule 8.
- (4) For the purposes of these rules, and subject to subrule (5), a document is served on the Commission, and correspondence directed to the Commission is received by the Commission:

- (a) if by hand, on the day of delivery, or
 - (b) if by post, on the day of receipt at the Registry, or
 - (c) if by DX, on the day following the day of leaving in the DX box set out in, or varied under, rule 8 or in another DX box for transmission to that DX box, or
 - (d) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of notification of a successful transmission), or
 - (e) if by electronic communication, at the time of entering the information system addressed to the email address set out in, or varied under, rule 8 as provided by the [Electronic Transactions Act 2000](#).
- (5) An application to resolve a dispute, and a reply to such an application, may not be lodged with the Commission by means of facsimile transmission (fax) or electronic communication.
- (6) For the purposes of these rules, a document is served by the Commission, and correspondence forwarded by the Commission is received:
- (a) if by hand, on the day of delivery, or
 - (b) if by post, on the fourth day after the day of sending by pre-paid post, or
 - (c) if by DX, on the day following the day of leaving in the DX box of the party to whom it was addressed or in another DX box for transmission to that DX box, or
 - (d) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of notification of a successful transmission), or
 - (e) if by electronic communication, at the time of entering the information system addressed to the party's email address as provided by the [Electronic Transactions Act 2000](#).
- (7) Service by the Commission on, or forwarding of correspondence by the Commission to, a party by electronic communication may be effected only if the party gives as part of its address for service an email address.
- (8) This rule applies subject to the [Service and Execution of Process Act 1992](#) of the Commonwealth.

20 Service on Authority

- (1) Where these rules require service on the Authority, that service is to be effected at the office of the Authority at:

Legal Group
WorkCover

Level 1, 60–70 Elizabeth Street, Sydney 2000.

(2) Service of a document may be effected at the office of the Authority:

(a) by hand, by delivering it to the address set out in subrule (1), or

(b) by post, by sending it by pre-paid post to:

Legal Group
WorkCover
GPO Box 2677
Sydney NSW 2001,

(c) by DX, by leaving it in the DX box at DX 731, Phillip Street Sydney or in another DX box for transmission to that DX box.

21 Address for service

(1) The address for service of a party to any proceedings is, in the case of the applicant, the address set out as the applicant's address in the first document lodged on behalf of the applicant in the proceedings, and in the case of a respondent, the address set out as the respondent's address in that document unless the respondent indicates in writing a different address.

(2) A respondent's address set out on behalf of the applicant as referred to in subrule (1) must be the address of the respondent's principal place of business or residence last known to the applicant, or, in the case where the respondent is a corporation, the address of the respondent's registered office.

(3) Subject to subrule (2), a party's address for service may be a postal address, document exchange (DX) box, fax number, email address (for electronic communications) or a physical address.

(4) A party may give its address for service as care of its legal representative or agent.

(5) A party to proceedings, or the party's legal practitioner or agent, may change the party's address for service at any stage in the proceedings, but must notify the Registrar and the other parties to the proceedings within 2 working days of the change.

22 Service at address for service

(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 another party is taken to be effected:

(a) if by hand, on the day of delivery, or

- (b) if by post, on the fourth day after the day of sending by pre-paid post, or
- (c) if by DX, on the day following the day of leaving in the DX box of the party to whom it was addressed or in another DX box for transmission to that DX box, or
- (d) if by fax, on the day of transmission (subject to receipt on the sending facsimile machine of a notification of a successful transmission), or
- (e) if by electronic communication, at the time of entering the information system addressed to the party's email address as provided by the *Electronic Transactions Act 2000*.

(3) This rule applies subject to the *Service and Execution of Process Act 1992* of the Commonwealth.

23 Sealed copies of documents

- (1) Where a party is required to serve a document after lodging the document:
 - (a) the party is required to serve a sealed copy of the document, and
 - (b) the party must tender to the Registry with the document one additional copy of the document and as many other additional copies of the document as there are parties to be served.
- (2) The Registrar must seal any copies of a document tendered as required by subrule (1) and return those copies to the party lodging the document.

24 Substituted service

- (1) Where for any reason it is impracticable to effect service of a document on a party by any method provided for in this Part, the Registrar may, on application supported by a statutory declaration showing grounds, by order direct that instead of service such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the party.
- (2) The Registrar may order that service be taken to have been effected on the happening of any specified event or on the expiry of any specified time.

25 Service in a foreign country

Where a document is to be served in a foreign country, the document is to be served in accordance with these rules:

- (a) subject to any applicable convention relating to the service of documents made between Australia and the country of service, and
- (b) with a translation in the official language of the country of service, with a certificate setting out the name and relevant qualifications of the translator.

Part 7 Proceedings commenced other than by application to resolve a dispute

26 Proceedings commenced by application for interim payment direction

(1) Proceedings in relation to:

- (a) the failure to determine a claim for weekly benefits as and when required by the 1998 Act, or
- (b) the failure to determine a claim for medical expenses compensation as and when required by the 1998 Act, or
- (c) the failure to commence provisional payments of compensation as required by Division 1 of Part 3 of Chapter 7 of the 1998 Act following initial notification of an injury,

are to be commenced by way of application for an interim payment direction.

- (2) An application for an interim payment direction is to be lodged with the Commission and include as attachments the information and other documents required by the form of application.
- (3) The applicant is to serve the application on the respondent on the same day as the application is lodged with the Commission.
- (4) The Registrar may provide a copy of the application to the respondent, and may obtain the respondent's views as to the application in such manner as the Registrar considers appropriate.

27 Interim payment directions

An interim payment direction is to include:

- (a) the name of the party to whom it is addressed, and
- (b) the name and address of the person to whom payment is to be made, and
- (c) whether the direction is in respect of weekly payments or is for medical expenses, and
- (d) in the case of weekly payments, the amount and the number of weeks for which the payments are to be made and when payments are to commence and conclude, and
- (e) in the case of medical expenses, the amount to be paid and the time by which payment is to be made, and
- (f) advice that a person who fails to comply with an interim payment direction is guilty of an offence in accordance with section 300 of the 1998 Act, and

(g) the conditions (if any) subject to which the direction is given.

28 Refund of interim payment direction payments

An order for the purpose of section 304 of the 1998 Act is to include:

- (a) the name of the person to whom it is addressed, and
- (b) the name and address of the person to whom payment is to be made, and
- (c) the amount of payments to be refunded or reimbursed and the time by which payment is to be made, and
- (d) the reasons for which the Commission has determined to issue the order.

29 Notice of revocation by Registrar of interim payment direction

- (1) The Registrar can, acting under section 299 (1) of the 1998 Act, revoke an interim payment direction on application by a party or on the Registrar's own motion.
- (2) An application for revocation by the Registrar of an interim payment direction is to be lodged with the Commission and is to include as attachments the information and other documents required by the form of application.
- (3) The applicant for revocation is to serve the application on the respondent to the application on the same day as the application is lodged with the Commission.
- (4) The Registrar may provide a copy of the application to the respondent to the application, and may obtain that respondent's views as to the application in such manner as the Registrar thinks appropriate.
- (5) Notice of any revocation by the Registrar of an interim payment direction is to be given by the Registrar to each of the parties to the proceedings.

30 Review of order to refund overpayments

- (1) A person against whom an order is made under section 235D (2) of the 1998 Act may apply for a review of the order by lodging:
 - (a) a copy of the order, and
 - (b) an application for review of the order, which must include the arguments to be put in favour of the application.
- (2) The applicant for a review must serve the application on the Authority on the same day as the application is lodged with the Commission.

31 Workplace injury management plans

- (1) Where a party to a dispute to which Division 3 of Part 5 of Chapter 7 of the 1998 Act

applies seeks to have the Registrar deal with the dispute under section 306 of that Act, the party must lodge with the Registrar, and serve on all other parties to the dispute, an application to resolve the workplace injury management dispute.

- (2) Before exercising a power under section 306 of the 1998 Act in respect of a dispute, the Registrar is to contact the parties to the dispute and advise them of the course of action the Registrar proposes to take, and that contact is to be made with a view to resolving the dispute expeditiously.
- (3) A direction by the Registrar that a workplace assessment be conducted is to include:
 - (a) the names and addresses of the parties to the dispute, and
 - (b) a statement of the nature of the obligation with which one of the parties is alleged to have failed to comply, and
 - (c) the name of the injury management consultant or other suitably qualified person who is to conduct the workplace assessment, and
 - (d) the amount of, and a note that the employer is liable for, the fee payable for the conduct of the workplace assessment.
- (4) A copy of the direction that a workplace assessment be conducted is to be sent to each of the parties, the insurer (if not a party) and the person who is to conduct the assessment.
- (5) The injury management consultant or other suitably qualified person who is to conduct the assessment must contact the parties and arrange to carry out the assessment as soon as practicable, but not more than 7 days after receiving the direction.
- (6) The injury management consultant or other suitably qualified person who is to conduct the assessment must provide the Registrar with a brief written report of the outcome of the assessment, setting out the reasons for any finding, as soon as practicable, but in any case not later than 7 days, after the assessment has been conducted, and the Registrar must make the report available to the parties.
- (7) A recommendation by the Registrar that a party to a dispute take specified action is to be in writing and must include:
 - (a) the name of the party to whom the recommendation is made, and
 - (b) the nature of the obligation with which one of the parties is alleged to have failed to comply, and
 - (c) the action that the Registrar considers necessary or desirable for the party to take to remedy the failure with which the dispute is concerned, and

(d) a note referring the party to whom the recommendation is made to the period for compliance or for requesting referral to the Commission as provided by section 308 of the 1998 Act.

(8) A copy of the recommendation issued by the Registrar is to be sent to each of the parties and the insurer (if not a party).

32 Referral to Arbitrator of workplace injury management dispute

(1) The Registrar may, on the Registrar's own motion or if the Registrar thinks fit on application by a party (or a party's insurer if not a party), refer a dispute about non-compliance with Chapter 3 of the 1998 Act to an Arbitrator for determination.

(2) In the event that the employer's insurer is not a party to the proceedings but the insurer's identity is known to the Registrar or readily ascertainable on the face of the documents, the Registrar is to notify the insurer of any such reference.

33 Partial dependants of deceased worker

(1) A party to an agreement referred to in section 26 (b) of the 1987 Act may apply for approval by the Commission of the agreement by lodging:

(a) a copy of the agreement, and

(b) a request for approval of the agreement, specifying the arguments to be put in favour of the request and having attached to it any supporting documentation to be relied upon.

(2) The Registrar is to make arrangements for the Commission to consider the agreement and for notifying the Commission's decision to the party who applied for the approval.

34 Registration of lump sum agreements

(1) In this rule, ***lump sum agreement*** means an agreement referred to in section 66A of the 1987 Act.

(2) A party to a lump sum agreement may apply for registration of the agreement by lodging:

(a) a copy of the agreement, and

(b) an application for registration of the agreement, including evidence that the worker received independent legal advice in accordance with section 66A (4A) of the 1987 Act.

(3) If a lump sum agreement for which an application is made for registration is incomplete or otherwise defective, the Registrar may reject the application, and in such case the application may be lodged again after the defect is rectified.

35 Registration of commutation agreements

- (1) In this rule, **commutation agreement** means an agreement referred to in section 87F of the 1987 Act.
- (2) A party to a commutation agreement may apply for registration of the agreement by lodging:
 - (a) a copy of the agreement, and
 - (b) an application for registration of the agreement, including evidence that the requirements of section 87F (2) of the 1987 Act have been complied with, and having attached to it the relevant certificate issued by the Authority as referred to in section 87EA (1) of that Act.
- (3) If a commutation agreement for which an application is made for registration is incomplete or otherwise defective, the Registrar may reject the application, and in such case the application may be lodged again after the defect is rectified.

Part 8 Proceedings commenced by application to resolve a dispute

36 Application of Part

This Part applies to proceedings that are commenced by way of an application to resolve a dispute.

37 Commencement by application to resolve a dispute

- (1) Subject to these rules, proceedings in relation to a matter under the Workers Compensation Acts are to be commenced by way of an application to resolve a dispute.
- (2) Where an application to resolve a dispute concerns a matter to which Part 7 applies, the Registrar may deal with the matter in accordance with Part 7, and in such a case the requirement for the respondent to lodge a reply to the application is deferred until such time as the Commission determines.
- (3) Within 7 days after the Registrar registers an application to resolve a dispute, the applicant must serve a sealed copy of the application on the respondent and any other party to the proceedings.
- (4) If the respondent is an employer (but not a self-insurer), the applicant must serve a sealed copy of the application on both the employer and the employer's insurer.
- (5) Where in respect of an application to resolve a dispute:
 - (a) a respondent has not lodged a reply in accordance with these rules, and
 - (b) the applicant has not filed a certificate of service certifying service of the

application on that respondent in accordance with these rules,

the proceedings as against that respondent are deemed to have been struck out, and no further step may be taken in the proceedings unless the proceedings are restored.

- (6) The Commission may, on application by a party and on terms, restore any proceedings deemed to have been struck out under subrule (5).

38 Material to be lodged with application

- (1) For the purposes of section 290 of the 1998 Act, the applicant must lodge and serve with the application to resolve a dispute all information and documents on which the applicant proposes to rely and that are in the possession or control of the applicant at that time.
- (2) Subject to subrules (3)–(5), an applicant may not in proceedings introduce evidence that has not been lodged with the application to resolve a dispute, reply or response, or as required by rule 44, in the proceedings unless:
- (a) the applicant has lodged and served with the application for dispute resolution, or, as the case may require, any response, in the proceedings, a statement revealing:
 - (i) the specific nature of the evidence, and
 - (ii) the reliance the applicant intends to place on the evidence, and
 - (iii) the reasons why the evidence is not available at the time of service, and
 - (iv) the time it is expected to be available, and
 - (b) the evidence is served on all other parties, and lodged, as soon as practicable after the evidence becomes available.
- (3) The Commission may, for the avoidance of injustice, allow an applicant to introduce evidence that the applicant would otherwise be prevented from introducing because of the operation of subrule (2).
- (4) Where an applicant wishes to rely on a document produced as required by a direction issued under section 357 of the 1998 Act, and claims that the applicant was:
- (a) unaware of the relevant information in the document, or
 - (b) unable to obtain possession of the document,
- at the time the applicant lodged the application to resolve a dispute, or, as the case may require, any response, in the proceedings, the applicant must, as soon as practicable after becoming aware of the information, lodge and serve on all other parties to the proceedings a statement revealing:

(c) the specific nature of the information, and

(d) the reliance the applicant intends to place on the information.

(5) Without limiting subrule (3), where an applicant complies with subrule (4) in respect of any information, the Commission may allow the applicant to introduce evidence of that information.

39 Reply by respondent

(1) The respondent in any proceedings must, within 21 days from the date of registration of the application to resolve a dispute in the proceedings, lodge a reply to the application and serve a sealed copy of the reply on the applicant and any other party to the proceedings.

(2) If the applicant is an employer (but not a self-insurer), the respondent must serve the reply on both the employer and the employer's insurer.

(3) Without leave of the Commission, the failure of a worker to notify of an injury as required by the Workers Compensation Acts may not be raised as an issue in the reply by the respondent if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act.

40 Material to be lodged by respondent

(1) For the purposes of section 290 of the 1998 Act, the respondent must lodge and serve with the reply all information and documents on which the respondent proposes to rely that have not been lodged with the application to resolve a dispute in the proceedings and that are in the possession or control of the respondent at that time.

(2) Subject to subrules (3)–(5), a respondent may not in proceedings introduce evidence that has not been lodged with the application to resolve a dispute, reply or response, or as required by rule 44, in the proceedings unless:

(a) the respondent has lodged and served with the reply a statement revealing:

(i) the specific nature of the evidence, and

(ii) the reliance the respondent intends to place on the evidence, and

(iii) the reasons why the evidence is not available at the time of service, and

(iv) the time it is expected to be available, and

(b) the evidence is served on all other parties and lodged as soon as practicable after the evidence becomes available.

(3) The Commission may, for the avoidance of injustice, allow a respondent to introduce evidence that the respondent would otherwise be prevented from introducing because

of the operation of subrule (2).

- (4) Where a respondent wishes to rely on a document produced as required by a direction issued under section 357 of the 1998 Act, and claims that the respondent was:
- (a) unaware of the relevant information in the document, or
 - (b) unable to obtain possession of the document,
- at the time the respondent lodged the reply in the proceedings, the respondent must, as soon as practicable after becoming aware of the information, lodge and serve on all other parties to the proceedings a statement revealing:
- (c) the specific nature of the information, and
 - (d) the reliance the respondent intends to place on the information.
- (5) Without limiting subrule (3), where a respondent complies with subrule (4) in respect of any information, the Commission may allow the respondent to introduce evidence of that information.

41 Response by applicant

- (1) Where a reply lodged in any proceedings raises issues not raised in the application to resolve a dispute in the proceedings, the applicant may, within 7 days of being served with the reply, lodge with the Commission and serve on the respondent a response limited to those issues.
- (2) Subrule (1) does not extend to allow an applicant to present to the Commission a case different from the case raised by the application for dispute resolution in the proceedings except where, and to the extent that, the Commission is satisfied that the applicant was not aware, when lodging the application to resolve a dispute, of the issues to which the response is limited.

42 Material to be lodged with response

- (1) For the purposes of section 290 of the 1998 Act, the applicant must lodge and serve with any response all information and documents:
- (a) on which the applicant proposes to rely in relation to the issues to which the response is limited, and
 - (b) that are in the possession or control of the applicant at that time and have not been lodged with the application to resolve a dispute or reply in the proceedings.
- (2) Rule 38 (2)–(5) applies in respect of any evidence lodged under this rule.

Part 9 Joinder of additional parties and disputes

43 Joining other parties and disputes

- (1) Proceedings may relate to one or more disputes arising out of a claim or in relation to the same injury (or series of injuries).
- (2) If there is more than one dispute arising out of the same injury (or series of injuries), the Registrar may direct that those disputes be dealt with in the same proceedings.
- (3) Two or more persons can be joined as the applicant or the respondent in any proceedings where:
 - (a) if separate proceedings are brought by or against each of them, some common question of law or fact would arise in all of those proceedings and all rights claimed in those proceedings (whether they are joint, several or alternative) would be in respect of or arise out of the same injury (or series of injuries), or
 - (b) the Commission gives leave to do so.
- (4) If a person who is not a party to any proceedings:
 - (a) should have been joined as a party to the proceedings, or
 - (b) is a person the joining of whom as a party to the proceedings is necessary to ensure that all matters in dispute may be effectually and completely determined,the Registrar, on application by the person or by a party, or on the Registrar's own motion, may order that the person be joined as a party to the proceedings and make such other relevant orders, including orders for amendment, in relation to the proceedings as the Registrar considers appropriate.
- (5) If a person is joined by order under subrule (4) on application by a party, the party must serve 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 (14 days after the date of service of the notice), and
 - (b) a copy of any document lodged to commence the proceedings, any document lodged in answer to that document or to any other document lodged in the proceedings, and any information or document required to be lodged and served with any such document, and
 - (c) a copy of a notice to any other person joining that other person as a party to the proceedings.
- (6) If a person is joined by order under subrule (4) on the person's own application or on the motion of the Registrar, the Registrar is to serve notice of the joinder on the

person.

- (7) Where the proceedings were commenced by way of application to resolve a dispute, the person joined as a party must lodge with the Commission and serve on the applicant and any other party to the proceedings a reply to the application to resolve a dispute within 14 days of being served with notice under subrule (5) or (6).
- (8) If the party joined is an employer (but not a self-insurer), the notice required by subrule (5) or (6) to be served must be served on both the employer and the employer's insurer.
- (9) Without leave of the Commission, the failure of a worker to notify of an injury as required by the Workers Compensation Acts may not be raised as an issue in the reply by the party joined if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act by the party joined.
- (10) A party joined who wishes to object to the joinder must include in the party's reply the reasons why the party should not properly be included as a party to the proceedings.
- (11) No proceedings are rendered invalid by reason only of the joinder of a person in error or by the failure to join a person as a party to those proceedings.

44 Material to be lodged by party joined

- (1) This rule applies to proceedings commenced by way of application to resolve a dispute.
- (2) For the purposes of section 290 of the 1998 Act, a party joined in proceedings must lodge and serve with the party's reply all information and documents:
 - (a) on which the party proposes to rely, and
 - (b) that are in the possession or control of the party at that time and have not already been lodged with any other document in the proceedings.
- (3) Subject to subrules (4)-(6), a party joined may not in proceedings introduce evidence that has not been lodged with the application to resolve a dispute, the respondent's reply, any response by the applicant, or the reply by the party joined, in the proceedings unless:
 - (a) the party joined has lodged and served with the party's reply a statement revealing:
 - (i) the specific nature of the evidence, and
 - (ii) the reliance the party joined intends to place on the evidence, and
 - (iii) the reasons why the evidence is not available at the time of service, and

- (iv) the time it is expected to become available, and
 - (b) the evidence is served on all other parties and lodged as soon as practicable after the evidence becomes available.
- (4) The Commission may, for the avoidance of injustice, allow a party joined to introduce evidence that the party would otherwise be prevented from introducing because of the operation of subrule (3).
- (5) Where a party joined wishes to rely on a document produced as required by a direction issued under section 357 of the 1998 Act, and claims that the party joined was:
- (a) unaware of the relevant information in the document, or
 - (b) unable to obtain possession of the document,
- at the time the party joined lodged the reply in the proceedings, the party must, as soon as practicable after becoming aware of the information, lodge and serve on all other parties to the proceedings a statement revealing:
- (c) the specific nature of the information, and
 - (d) the reliance the party joined intends to place on the information.
- (6) Without limiting subrule (4), where a party joined complies with subrule (5) in respect of any information, the Commission may allow the party to introduce evidence of that information.

Part 10 Directions for production and summonses

45 Production of Commission records

- (1) A party to any proceedings (the **first proceedings**) may request the Registrar, in writing, to produce the Commission's record of any other proceedings:
- (a) for inspection by the party, or
 - (b) for use as evidence in the first proceedings, or
 - (c) for both such inspection and use.
- (2) The Registrar must comply with a request made in accordance with subrule (1) unless the Registrar is of the opinion that the request is unreasonable.
- (3) This Part, other than this rule, does not apply to the production of records of the Commission.

46 Definitions

In this Part:

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

first access order means an order specifying:

- (a) which party to proceedings 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 that party.

47 Request for direction for production

- (1) A party to proceedings may request the issue under section 357 of the 1998 Act of a direction for the production of documents by lodging a proposed direction for production with the Registrar.
- (2) The proposed direction for production must be lodged within 28 days from the date of registration of the application to resolve a dispute in the proceedings.
- (3) If a request for a direction for production is lodged otherwise than in accordance with subrule (2), the direction must not be issued unless the Registrar is satisfied that:
 - (a) the party requesting the direction was not aware, and could not reasonably have become aware through the exercise of due diligence, of the existence of the requested material at the time the direction was required to be lodged under subrule (2), and
 - (b) failure to issue the direction would result in a substantial injustice to the party requesting the direction, and
 - (c) the other parties to the proceedings will not be prejudiced by the issuing of the direction.
- (4) If a direction for production is requested otherwise than in accordance with subrule (2), the party requesting the direction must serve the Registrar and the other parties to the proceedings with written submissions as to the criteria set out in subrule (3).
- (5) A party to the proceedings who wishes to object to the issue of a direction for production requested otherwise than in accordance with subrule (2) must lodge written notice including the reasons for the objection with the Registrar within 2 working days of being served with submissions in accordance with subrule (4).
- (6) Subject to subrule (8) (c), the Registrar must determine an objection lodged in accordance with subrule (5).

- (7) The Registrar may determine an objection to the issue of a direction for production lodged in accordance with subrule (5) solely on the basis of written submissions lodged under subrules (4) and (5).
- (8) Without limiting subrule (7), when considering an objection to the issue of a direction for production the Registrar may do any of the following:
 - (a) seek further oral or written information from the parties to the proceedings or the producer,
 - (b) list the objection for hearing before the Registrar,
 - (c) refer the objection to an Arbitrator for determination.

48 Direction for production

The Registrar may issue a direction for production where a request is made in accordance with rule 47.

49 Access orders

- (1) The party requesting a direction for production must include a proposed first access order in the proposed direction.
- (2) Unless the Registrar otherwise orders:
 - (a) the first access order proposed by the requesting party under subrule (1) takes effect on the day after the date for production inserted in the direction for production, and
 - (b) the period of first access specified in a first access order must not exceed 7 days, and
 - (c) during the first access period, only the party named in the first access order may access documents produced under a direction for production, and
 - (d) the other parties to the proceedings may access documents produced to the Commission under a direction for production for the same length of time as provided under the first access order after the time specified in the first access order has expired.
- (3) Despite subrule (1), the Registrar may:
 - (a) make a first access order as part of a direction for production if the requesting party has not included a proposed first access order, or
 - (b) make a first access order as part of a direction for production in different terms to the proposed first access order included by the requesting party.

50 Time for service and production

- (1) The party requesting the issue of a direction for production must insert a date for production in the direction prior to lodging the direction.
- (2) The date for production to be inserted in a direction for production is the date 46 days after the date of registration of the application to resolve a dispute in the proceedings, or such other date as the Registrar directs.
- (3) Subject to subrules (4) and (7), the party requesting a direction for production must serve the producer and the other parties to the proceedings with the direction for production not less than 7 days before the date for production specified in the direction.
- (4) A direction for production to be served interstate must be served in accordance with the procedure specified in the *Service and Execution of Process Act 1992* of the Commonwealth.
- (5) A party may apply to the Registrar for abridgment of the time for service of a direction for production.
- (6) Written reasons must be given by the party seeking abridgment at the time the direction for production is requested.
- (7) The Registrar may issue a direction for production with abridged time for service where the party seeking the abridgment establishes that the producer has consented to the abridgment or the Registrar is of the view that the circumstances of the case warrant abridgment.
- (8) The producer is not required to comply with a direction for production unless the producer is served with the direction in accordance with this rule.

51 Mode of service

- (1) Where the producer is not a party to the proceedings, a direction for production may be served on the producer:
 - (a) by delivering it to the producer, or
 - (b) by leaving it at the producer's residence or place of business with a person apparently not less than 16 years old and apparently residing at that residence or employed at that place of business, or
 - (c) by sending it by pre-paid post addressed to the producer at the producer's residence or place of business, or
 - (d) if the producer has a document exchange (DX) box, by leaving it in that DX box or in another DX box for transmission to that DX box.

- (2) A direction for production posted to a producer as referred to in subrule (1) (c) is taken to be served on the fourth day after the day of sending by pre-paid post.
- (3) A direction for production left in a DX box as referred to in subrule (1) (d) is taken to be served on the day following the day on which it was so left.
- (4) In this rule, **place of business** in relation to a producer means a place of business of which the producer is the proprietor or one of the proprietors.

52 Setting aside or varying a direction for production

The Registrar may, on the Registrar's own motion or on the request of any person having sufficient interest, but only if the request is made in accordance with these rules, set aside or vary a direction for production wholly or in part.

53 Setting aside or varying a direction for production following non-production

- (1) Where a producer has not produced documents to the Commission in compliance with a direction for production, 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 Registrar not later than 2 working days after the date for production make any one or more of the following requests:
 - (i) a request that the terms of the direction be altered,
 - (ii) a request for an extension of time for compliance with the direction,
 - (iii) a request that the matter be referred to the Authority for consideration as to prosecution for an offence under section 357 (3) of the 1998 Act.
- (2) A written notice lodged by the requesting party under subrule (1) (b) must include reasons for the request.
- (3) A written notice lodged by the requesting party under subrule (1) (b) (i) or (ii) must be served on the other parties to the proceedings not later than 2 working days after the date for production.
- (4) A party to the proceedings who wishes to object to a request lodged under subrule (1) (b) (i) or (ii) must lodge written notice including the reasons for the objection with the Registrar within 2 working days of being served with the notice in accordance with subrule (3).
- (5) The Registrar may determine a request lodged under subrule (1) (b) solely on the basis of the written notice and written objection lodged under subrules (1) (b) and (4).
- (6) Without limiting subrule (5), when considering a request lodged under subrule (1) (b)

the Registrar may do any of the following:

- (a) determine the request,
 - (b) seek further oral or written information from the parties to the proceedings or the producer,
 - (c) list the request for hearing before the Registrar,
 - (d) refer the request to an Arbitrator for determination.
- (7) The Registrar may set aside or vary the terms of a direction for production following determination of a request lodged under subrule (1) (b).
- (8) The Registrar may only grant an extension of time for a producer to comply with a direction for production if the party who requested the direction has, before the date for production, taken all reasonable measures to ensure compliance with the direction.

54 Objection by producer

- (1) A producer may object to a direction for production by objecting to either or both of the following:
- (a) the production of documents under the direction,
 - (b) the terms of access to the documents produced under the direction.
- (2) A producer who objects to a direction for production under subrule (1) must notify the Registrar of the objection in writing prior to the date for production.
- (3) An objection to a direction for production made in accordance with subrule (2) must clearly identify the documents that are the subject of the objection and provide reasons for the objection.
- (4) A producer who objects to a direction for production in accordance with subrule (2) is excused from complying with the direction until the objection is determined.
- (5) The Registrar must notify the parties to the proceedings of an objection to a direction for production lodged in accordance with subrule (2).
- (6) A party to the proceedings who wishes to oppose an objection to a direction for production must lodge written notice including the reasons for the opposition with the Registrar within 2 working days of being notified of the objection in accordance with subrule (5).
- (7) The Registrar may determine an objection to a direction for production lodged in accordance with subrule (2) solely on the basis of the written objection and written opposition lodged in accordance with subrules (2) and (6).

- (8) Without limiting subrule (7), when considering an objection to a direction for production lodged in accordance with subrule (2) the Registrar may do any of the following:
 - (a) determine the objection,
 - (b) seek further oral or written information from the parties to the proceedings or the producer,
 - (c) list the objection for hearing before the Registrar,
 - (d) refer the objection to an Arbitrator for determination.
- (9) The Registrar may set aside or vary the terms of a direction for production following determination of an objection lodged in accordance with subrule (2).

55 Objection by a party prior to production

- (1) A party to proceedings may object to a direction for production by objecting to any of the following:
 - (a) the production of documents under the direction,
 - (b) the terms of the first access order under the direction,
 - (c) the terms of access to the documents produced under the direction.
- (2) A party who objects to a direction for production under subrule (1) must notify the Registrar and the other parties to the proceedings of the objection in writing prior to the date for production.
- (3) An objection to a direction for production lodged in accordance with subrule (2) must clearly identify the documents that are the subject of the objection and provide reasons for the objection.
- (4) A party to the proceedings who wishes to oppose an objection to a direction for production must lodge written notice including the reasons for the opposition with the Registrar within 2 working days of being served with the notice of objection in accordance with subrule (2).
- (5) The Registrar may determine an objection to a direction for production lodged in accordance with subrule (2) solely on the basis of the written objection and written opposition lodged in accordance with subrules (2) and (4).
- (6) Without limiting subrule (5), when considering an objection to a direction for production lodged in accordance with subrule (2) the Registrar may do any of the following:
 - (a) determine the objection,

- (b) seek further oral or written information from the parties to the proceedings or the producer,
 - (c) list the objection for hearing before the Registrar,
 - (d) refer the objection to an Arbitrator for determination.
- (7) The Registrar may set aside or vary the terms of a direction for production following determination of an objection lodged in accordance with subrule (2).

56 Objection after production by a party entitled to first access

- (1) A party to proceedings who is entitled to first access to document produced to the Commission in accordance with a direction for production may object to another party accessing those documents.
- (2) A party who objects under subrule (1) to another party having access must, prior to the expiry of the period contained in the first access order:
 - (a) if any documents in respect of which the objection is made are produced to the Commission by electronic communication, obtain a hard copy of those documents, and
 - (b) separately package and identify the documents in respect of which the objection is made from the other documents that have been produced, and
 - (c) notify the Registrar and the other parties to the proceedings of the objection in writing clearly identifying the documents in respect of which the objection is made and providing reasons for the objection.
- (3) Where a party has lodged an objection in accordance with subrule (2), the other parties to the proceedings may access documents only in accordance with the terms of the objection unless the objection is determined under subrule (5).
- (4) A party to the proceedings who wishes to oppose an objection to access must lodge written notice including the reasons for the opposition with the Registrar prior to the expiry of the access period for that party.
- (5) The Registrar may determine an objection to access lodged in accordance with subrule (2) solely on the basis of the written objection and opposition lodged in accordance with subrules (2) and (4).
- (6) Without limiting subrule (5), when considering an objection to access in accordance with subrule (2) the Registrar may do any of the following:
 - (a) determine the objection,
 - (b) seek further oral or written information from the parties to the proceedings or the producer,

(c) list the objection for hearing before the Registrar,

(d) refer the objection to an Arbitrator for determination.

(7) The Registrar may vary the terms of a direction for production following determination of an objection to access lodged in accordance with subrule (2).

57 Compliance

(1) The producer may produce documents by hand, post, DX, or electronic communication to the address of the Commission stated on the direction for production.

(2) Unless the direction for production otherwise provides, the producer may produce clear, sharp photocopies of the documents to be produced in compliance with a direction for production.

(3) The Registrar must advise the parties to the proceedings when documents have been produced to the Commission in compliance with a direction for production.

58 Conduct money and expenses

(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 or tendered to the producer at the time of service of the direction or not later than a reasonable time before the date for production.

(2) Where a producer is not a party and, in consequence of service of the direction, reasonably incurs expense or loss substantially exceeding any amount paid or tendered under subrule (1), the Registrar may order that the party who requested the issue of the direction pay to the producer an additional amount in respect of the expense or loss.

59 Inspection of produced material

A party or a party's legal representative or agent may, subject to these rules and the terms of the access order made or varied by the Registrar:

(a) inspect documents produced in compliance with a direction for production, and

(b) make copies of any documents so inspected.

60 Return of documents

Documents produced to the Commission under a direction for production may be returned to the producer if so requested, or destroyed by the Commission:

(a) 28 days after finalisation of the proceedings if an appeal has not been lodged, or

- (b) after any appeal in the proceedings has been determined and any period for further appeal has expired.

61 Exercise of function or power under this Part

When proceedings are before any other member of the Commission, any function or power of the Registrar under this Part may be exercised by that member.

62 Summons—issue and service

- (1) A request by a party for the issue of a summons under section 359 of the 1998 Act in any proceedings is to be made by lodging the summons.
- (2) The Registrar must ensure that the correct date, time and place for the attendance of the person required to attend (***the attendee***) are specified in the summons, and must then seal and issue the summons.
- (3) The party who requested the issue of the summons must serve the summons on the attendee, and on each other party to the proceedings, not less than 7 days before the date on which the attendee is required to attend.
- (4) Where the party who requested the issue of the summons applies in writing to the Registrar for the abridgment of the time specified in subrule (3), and provides written reasons for the application, the Registrar may abridge that time if the Registrar is satisfied that:
 - (a) the attendee has consented to the abridgment, or
 - (b) the circumstances of the case warrant the abridgment.
- (5) The attendee is not required to comply with a summons unless:
 - (a) the summons is served on the attendee in accordance with these rules, and
 - (b) an amount sufficient to meet the reasonable expenses of compliance is paid or tendered to the attendee at the time of service of the summons or not later than a reasonable time before the time at which the attendee is required to attend.
- (6) Where the attendee is not a party to the proceedings and in consequence of the service of the summons incurs expense or loss substantially exceeding any amount paid or tendered as referred to in subrule (5) (b), the Registrar may order that the party who requested the issue of the summons pay to the attendee an additional amount in respect of the expense or loss.

63 Summons—variation

- (1) The Registrar may, on the Registrar's own motion or on the application of any person having sufficient interest, set aside or vary a summons wholly or in part.

- (2) The Registrar may, on written application (including reasons) made, by the party who requested the issue of the summons, on or before the date on which the attendee is required to attend, order that:
- (a) the attendee be excused from complying with the summons, or
 - (b) the terms of the summons be altered.

64 Summons—non-compliance

Where the attendee has not complied with a summons, the Registrar:

- (a) may, and
- (b) on the application of the party who requested the issue of the summons made not later than 7 days after the date on which the attendee was required to attend, must refer the matter to the Authority for consideration as to prosecution for an offence under section 359 (2) of the 1998 Act.

Part 11 Evidence

65 Tapes, films and photographs

- (1) This rule applies to:
- (a) videotapes, and
 - (b) audiotapes, and
 - (c) film or photographs, and
 - (d) x-ray film, and
 - (e) the results of specialised medical investigations, including computerised tomography, medical ultrasound and magnetic resonance imaging scans, on which a party proposes to rely in any proceedings.
- (2) Where a document to which this rule applies constitutes surveillance material, any investigator's report concerning the material:
- (a) must clearly and unambiguously identify the material, and
 - (b) is, for the purposes of subrule (3), deemed 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 rules 38, 40, 42 and 44.
- (4) In the case of documents referred to in subrule (1) (e):

- (a) original films or scans are not to be lodged with the Commission, and
 - (b) the lodging and service of a list describing and clearly identifying the films or scans satisfies the lodging and service requirements of rule 38 (1), 40 (1), 42 (1) or 44 (2), as the case may require, and
 - (c) original films or scans may be taken or delivered to an approved medical specialist undertaking an assessment for the purposes of the relevant proceedings.
- (5) A party who intends to take or deliver original films or scans as referred to in subrule (4) (c) in the course of proceedings must notify the Commission and the other parties to the proceedings by notice in writing, not less than 7 days prior to the taking or delivery, of the party's intention.

66 Calling of witnesses

- (1) Where a party proposes to rely on the oral evidence of a witness, the party must lodge and serve 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,
- with the information and documents required under rule 38 (1), 40 (1), 42 (1) or 44 (2) (as the case may require) to be lodged and served by the party.
- (2) Subject to subrules (3), (4) and (6), a party may not in proceedings call a witness to give oral evidence that has not been included in a document lodged and served as required by subrule (1) unless:
- (a) the party has lodged and served with the information and documents required under rule 38 (1), 40 (1), 42 (1) or 44 (2) (as the case may require) a statement revealing:
 - (i) the specific nature of the evidence, and
 - (ii) the reliance the party intends to place on the evidence, and
 - (iii) the reasons why the evidence has not been included in a statement as required by subrule (1), and
 - (iv) the time the evidence is expected to be so included, and
 - (b) the evidence is included in a written statement served on all other parties and lodged as soon as practicable after that statement can be obtained.
- (3) Where:

(a) a person refuses to sign a statement of the oral evidence to be given in proceedings by the person, and

(b) the party wishing to adduce the evidence has served a summons as required by rule 62 (3) in respect of the person,

this rule does not prevent the party from calling the person to give the evidence.

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

(5) Where a party wishes to rely on oral evidence provided because of information contained in a document produced as required by a direction issued under section 357 of the 1998 Act, and claims that the party was:

(a) unaware of the relevant information in the document, or

(b) unable to obtain possession of the document,

at the time when the party was required by subrule (1) to lodge and serve a statement of the evidence, the party must, as soon as practicable after becoming aware of the information, lodge and serve on all other parties to the proceedings a statement revealing:

(c) the specific nature of the evidence, and

(d) the reliance the party intends to place on the evidence.

(6) Without limiting subrule (4), where a party complies with subrule (5) in respect of any evidence, the Commission may allow the party to introduce the evidence.

(7) Where a party proposes to give oral evidence, this rule applies to the party as though the party were the party's witness as well as being the party, and so applies in respect of any proceedings not heard and determined before this rule takes effect.

67 Expert witness

(1) Rule 66 applies in respect of an expert witness as it applies in respect of any other witness.

(2) A party proposing to call a witness to give evidence as an expert witness has a duty to ensure that the witness is aware of and adheres to any Practice Direction in force with respect to expert witnesses.

(3) Expert evidence that does not comply with any Practice Direction referred to in subrule (2) is not admissible in any proceedings unless the Commission otherwise orders.

68 Medical reports

- (1) This rule applies to medical reports to which the restrictions in clause 51F of the *Workers Compensation (General) Regulation 1995* apply.
- (2) Where the documents to be lodged by a party to any proceedings as required by rule 38 (1), 40 (1), 42 (1) or 44 (2) include more than one medical report in any particular specialty, the party must include with the reports a clear indication in writing as to which of the reports the party will introduce in evidence in the proceedings.
- (3) Where a party to any proceedings, in accordance with these rules, proposes to rely on a medical report that was not included in the documents lodged by the party as required by rule 38 (1), 40 (1), 42 (1) or 44 (2) in lieu of a medical report that was so included, the party must so inform the Registrar and the other parties to the proceedings, in writing, as soon as practicable.

Part 12 Further provisions regarding proceedings

69 Procedural orders by Arbitrators

Where proceedings are referred to an Arbitrator, the Arbitrator may, while the referral continues, make any order relating to the procedure to be followed in those proceedings (including an order striking out the proceedings or any step in the proceedings) that could be made by the Registrar.

70 Principles of procedure

When informing itself on any matter, the Commission is to bear in mind the following principles:

- (a) evidence should be logical and probative,
- (b) evidence should be relevant to the facts in issue and the issues in dispute,
- (c) evidence based on speculation or unsubstantiated assumptions is unacceptable,
- (d) unqualified opinions are unacceptable.

71 Measures to assist parties

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

- (a) assist the parties to any proceedings to understand the nature of the proceedings and the legal implications of any assertion made in any documents or otherwise in the proceedings, and
- (b) explain to the parties any aspect of the procedure or any decision or ruling made by the Commission in relation to the proceedings, and

- (c) ensure that the parties have the fullest opportunity practicable to have their case in the proceedings considered without compromising the objectives of the Commission, and
- (d) ensure that the parties have the opportunity to explore settlement in the proceedings.

72 Statement as to agreed facts and issues

- (1) The Commission may direct the parties to file a joint signed statement setting out the facts and issues on which the parties agree, and the facts and issues that continue to be in dispute.
- (2) The parties are bound by the statement and may not assert the contrary except with the leave of the Commission.
- (3) A direction issued under subrule (1) must, unless the Commission otherwise orders, direct that the joint signed statement be filed not later than 7 days prior to the arbitration in the proceedings.

73 Certificates of determination

- (1) A statement of the Commission's reasons referred to in section 294 (2) of the 1998 Act is to include:
 - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and
 - (b) the Commission's understanding of the applicable law, and
 - (c) the reasoning processes that lead the Commission to the conclusions it made.
- (2) Without limiting subrule (1), the reasons set out in a statement referred to in subrule (1) are to be stated sufficiently (in the opinion of the Commission) to make the parties aware of the Commission's view of the case made by each of them.

74 Discontinuance

- (1) An applicant may discontinue any proceedings, or any part of any proceedings, as against any or all of the other parties to the proceedings, at any time.
- (2) The applicant and any other party to any proceedings may agree to the discontinuance of the proceedings (or any part of the proceedings) as against that other party at any time.
- (3) A discontinuance referred to in subrule (1) or (2) takes effect when a notice of the discontinuance, stating the limits (if any) of the discontinuance, is served on all parties to the proceedings who are not parties to the discontinuance and given to the Registrar.

- (4) A party against whom proceedings are discontinued and who has not agreed to the discontinuance may, within 7 days after the discontinuance takes effect, apply to the Commission for an order for payment of the party's costs of the proceedings incurred before the discontinuance.

75 Determination by consent order

- (1) Where the parties, or some of the parties, to proceedings in respect of a dispute agree as to the terms of an order to be made determining the dispute as between those parties, and that order is an order that the Commission otherwise has power to make, the Commission may determine the dispute as between those parties by making that order.
- (2) An order referred to in subrule (1) may be drawn up, with the consent of each party who has agreed to the order endorsed on it and signed by the party or the party's legal representative or agent in the proceedings, and lodged.
- (3) The Commission may make an order referred to in subrule (1) by signing the order as lodged under subrule (2).

Part 13 Referral of questions of law and appeals

76 Referral of question of law

- (1) A question of law arising in proceedings before the Commission constituted by an Arbitrator may be referred under section 351 of the 1998 Act for the opinion of the Commission constituted by the President only if a certificate of determination has not been issued in respect of the proceedings.
- (2) A party to any proceedings applying for the reference by an Arbitrator of a question of law in the proceedings under section 351 of the 1998 Act must lodge the application and serve it on the Arbitrator, the Authority, and the other parties to the proceedings as soon as practicable.
- (3) An application referred to in subrule (2) must include, or have attached, full details of the question of law and the reasons for seeking its 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.
- (4) Where a party seeks to oppose an application referred to in subrule (2) the party must, within 14 days of being served with the application, lodge and serve on the Arbitrator, the Authority, and the other parties notice of that opposition.
- (5) A notice of opposition must include, or have attached, full details of the reasons for opposing the application.
- (6) Where an application is lodged under subrule (2), and 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 that objection, including the reasons for the objection in full, in the application or notice of opposition lodged by the party.

- (7) Where an Arbitrator, on the application of a party, seeks leave to refer a question of law under section 351 of the 1998 Act, the Arbitrator must give to the Registrar, as soon as practicable and in any case before any certificate of determination is issued in respect of the proceedings:
 - (a) the application served on the Arbitrator under subrule (2), and
 - (b) any notice of opposition served on the Arbitrator under subrule (4), and
 - (c) any statement of the question of law that the Arbitrator wishes to be considered by the President.
- (8) Where an Arbitrator, of the Arbitrator's own motion, decides to seek leave to refer a question of law under section 351 of the 1998 Act, the Arbitrator must, as soon as practicable, give to the Registrar a notice of that decision including, or having attached, full details of the question of law and the reasons for seeking leave to refer it, including the reasons why it is alleged that the question involves a novel or complex question of law as referred to in subsection (3) of that section.
- (9) Where an Arbitrator seeks leave to refer a question of law under section 351 of the 1998 Act and decides not to make an award in the matter in which the question arose (as authorised by subsection (5) of that section), the Arbitrator must give to the Registrar a notice of that decision including, or having attached, the reasons for the decision.
- (10) The Registrar must, as soon as practicable, give to the parties copies of any notice under subrule (8) or (9) received by the Registrar.

77 Appeal against Arbitrator's decision

- (1) A party to any proceedings applying for leave to appeal under section 352 of the 1998 Act against a decision of an Arbitrator must lodge the application within 28 days after the making of the decision, or within such extended time for making the appeal as may be ordered under subrule (8).
- (2) For the purposes of subrule (1), a decision is made, in respect of a dispute, when the Commission issues a certificate as to the determination of the dispute as required by section 294 (1) of the 1998 Act.
- (3) An application referred to in subrule (1) must include, or have attached, full details of:
 - (a) the arguments to be put in favour of review of the decision sought to be appealed against, and

- (b) for the purposes of section 352 (2) of the 1998 Act, the amount of compensation alleged to be at issue on the appeal, and
 - (c) any new evidence in respect of which leave is to be sought, by the party lodging the application, in accordance with section 352 (6) of the 1998 Act, and
 - (d) if the party lodging the application wishes to object to the matter of leave to make the appeal, or the appeal, being decided solely on the basis of the written application and any written notice of opposition lodged, the reasons for the objection.
- (4) The party lodging an application referred to in subrule (1) must serve the application, including any attachments, on:
- (a) all other parties to the proceedings, and
 - (b) where any of those parties is an employer (but not a self-insurer), the employer's insurer,
- during the period of 7 days commencing on the day on which the Registrar registers the application.
- (5) Where a party seeks to oppose an application referred to in subrule (1), or the appeal in respect of which the application is made, the party must, within 14 days of being served with the application, lodge and serve on the other parties notice of that opposition.
- (6) A notice of opposition referred to in subrule (5) must include, or have attached, full details of:
- (a) the arguments to be put against review of the decision sought to be appealed against, and
 - (b) for the purposes of section 352 (2) of the 1998 Act, the amount of compensation alleged to be at issue on the appeal, and
 - (c) any new evidence in respect of which leave is to be sought, by the party lodging the notice, in accordance with section 352 (6) of the 1998 Act, and
 - (d) if the party lodging the notice wishes to object to the matter of leave to make the appeal, or the appeal, being decided solely on the basis of the written application and any notice of opposition lodged, the reasons for the objection.
- (7) For the purposes of section 352 (4) of the 1998 Act, an appeal is made when the application for leave to make the appeal is lodged as required by subrule (1).
- (8) The Commission constituted by a Presidential member may, if a party satisfies the Presidential member, in exceptional circumstances, that to lose the right to seek leave

to appeal would work demonstrable and substantial injustice, by order extend the time for making an appeal.

- (9) A party who seeks an extension of time as referred to in subrule (8) must:
- (a) as soon as practicable give notice to the other parties of the intention to seek the extension, and
 - (b) lodge and serve with the application for leave to appeal an application for the extension of time, including full details of the arguments to be put in favour of granting the extension.

Part 14 Work injury damages

78 Definitions

In this Part, ***claimant*** and ***defendant*** have the meaning given to them by section 311 of the 1998 Act.

79 Threshold disputes

- (1) A claimant who seeks assessment of the degree of permanent impairment disputed as referred to in section 313 of the 1998 Act must lodge an application for that assessment.
- (2) An application referred to in subrule (1) must include, or have attached to it:
 - (a) evidence that a claim has been made on the defendant or insurer in accordance with the relevant WorkCover Guidelines, and that the threshold dispute exists as referred to in section 314 of the 1998 Act, and
 - (b) all documents that the claimant wishes to be considered by the accredited medical specialist who is to assess the degree of permanent impairment.
- (3) The claimant must serve an application referred to in subrule (1), including any attachments, on the defendant involved in the threshold dispute within 7 days after the Registrar registers the application.
- (4) A defendant served with an application referred to in subrule (1) must, within 21 days from the date of registration of the application, lodge and serve on the claimant all documents that the defendant wishes to be considered by the approved medical specialist who is to assess the degree of permanent impairment.

80 Pre-filing statement

- (1) For the purposes of section 315 of the 1998 Act, a pre-filing statement is to consist of a copy of the statement of claim intended to be filed in the court of relevant jurisdiction and is to include as attachments the information and other documents required by the Workers Compensation Acts and these rules.

- (2) If the defendant is an employer (but not a self-insurer), the claimant must serve the pre-filing statement on both the employer and the employer's insurer.

81 Material to be served with pre-filing statement

- (1) For the purposes of sections 315 and 318 of the 1998 Act, a claimant for work injury damages must serve with the pre-filing statement all information and documents upon which the claimant proposes to rely including:
 - (a) any notification provided to the claimant as required by section 281 (2B) of the 1998 Act that the degree of permanent impairment of the injured worker resulting from the injury is accepted as being sufficient for an award of work injury damages, or
 - (b) if the dispute has been referred to an approved medical specialist for assessment of permanent impairment, the medical assessment certificate issued by the approved medical specialist in accordance with section 325 of the 1998 Act.

82 Pre-filing defence

- (1) In accordance with section 316 of the 1998 Act, a pre-filing defence is to consist of a copy of the defence intended to be filed in the court of relevant jurisdiction and is to include as attachments the information and other documents required by the Workers Compensation Acts and these rules.
- (2) Without leave of the Commission, the failure of a worker to notify of an injury as and when required by the Workers Compensation Acts may not be raised as an issue in the pre-filing defence served by the defendant if that issue has not been included in the notice given in accordance with section 74 of the 1998 Act.

83 Material to be served with pre-filing defence

For the purposes of sections 316 and 318 of the 1998 Act, the defendant must serve with the pre-filing defence all information and documents upon which the defendant proposes to rely.

84 Defective pre-filing statement

- (1) Where, in accordance with section 317 (1) of the 1998 Act, a defendant gives notification to a claimant that the claimant's pre-filing statement is defective, the defendant must lodge a copy of the notification as soon as practicable after giving the notification to the claimant.
- (2) A claimant who has been notified as referred to in subrule (1) must, within 7 days of being so notified, lodge and serve on the defendant advice as to whether or not the claimant accepts that the pre-filing statement is defective, and, if the claimant so accepts, in what detail and to what extent.

- (3) A claimant who has lodged and served advice as referred to in subrule (2) may lodge and serve on the defendant, with the advice or within 7 days of serving the advice, a request that the dispute be referred to the Registrar for determination under section 317 (2) of the 1998 Act.
- (4) Where a claimant does not comply with subrule (2), or fails to lodge and serve a request referred to in subrule (3):
 - (a) the defendant may, within 7 days of the non-compliance or failure (as the case may require), lodge and serve on the claimant a request that the dispute be referred to the Registrar for determination under section 317 (2) of the 1998 Act, and
 - (b) if the defendant does not do so, the pre-filing statement served by the claimant is taken not to have been served.
- (5) A party who lodges a request for referral as mentioned in subrule (3) or (4) (a) must lodge with the request a copy of the pre-filing statement, and the notification, referred to in subrule (1).
- (6) Where a party requests in accordance with this rule that a dispute be referred to the Registrar for determination under section 317 (2) of the 1998 Act, and lodges a certificate certifying service of the request on the other party within 2 working days of that service, the dispute is so referred.
- (7) Where a dispute is referred for determination in accordance with subrule (6) and the Registrar determines that the pre-filing statement is defective, the pre-filing statement is, in accordance with section 317 (4) of the 1998 Act, considered to have been served on the date of service on the defendant of the last document or information required to cure the defect.
- (8) Where a dispute is referred for determination in accordance with subrule (6) and the Registrar determines that the pre-filing statement is not defective, the Registrar may direct that the pre-filing statement be considered to have been served on the date when it was in fact served or a subsequent date.
- (9) Where a defendant has given notification as referred to in subrule (1) and subsequently in respect of the same claim serves a pre-filing defence as referred to in rule 82:
 - (a) notwithstanding any application of subrule (4) (b), the pre-filing statement is taken to have been served, and
 - (b) the defendant is taken to have waived any objection to the defects alleged in the notification.

85 Referral for mediation

- (1) A claimant may apply for the referral of a claim for mediation as mentioned 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 all information and documents served with the pre-filing statement as required by rule 81.
- (2) A claimant who applies to refer a claim for mediation must serve the application on the defendant within 7 days of lodging the application.
- (3) If the defendant does not lodge a reply in accordance with rule 86, the claim may not be referred to mediation until the claimant lodges a certificate certifying service of the application for the referral.

86 Reply to application for mediation

- (1) A defendant served with an application for mediation of a claim as referred to in rule 85 must, within 7 days of being so served, lodge:
 - (a) a reply 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 all information and documents served with the pre-filing defence as required by rule 83.
- (2) A reply referred to in subrule (1) 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) A defendant who lodges a reply as required by subrule (1) (a) must serve the reply on the claimant within 7 days of lodging the reply.

87 Mediator unable to mediate

If the mediator to whom a claim is referred by the Registrar is unwilling or unable to act as a mediator in respect of the claim:

- (a) the mediator must notify the Registrar of the unwillingness or inability, in writing, as soon as practicable, and
- (b) the Registrar must then so notify the parties, and

- (c) the Registrar may revoke the direction referring the claim to the mediator and make a direction referring the claim to another mediator.

88 Certificate of mediation outcome

- (1) Where a defendant has lodged, under rule 86, a reply that indicates that the defendant declines to participate in mediation on the grounds that the defendant wholly disputes liability in respect of the claim, the Registrar may issue a certificate to that effect.
- (2) A certificate of mediation outcome issued in accordance with section 318B of the 1998 Act is to include:
 - (a) the names and addresses of the parties to the dispute, and
 - (b) the names of persons in attendance at the mediation, and
 - (c) a statement that the parties failed to resolve the dispute and reach settlement, and
 - (d) the final offers of settlement made by the parties in the mediation.

Part 15 Miscellaneous

89 Practice Directions

The President, in consultation with the Deputy Presidents, may issue Practice Directions in relation to the operation of these rules, and may from time to time amend any such Practice Direction.

90 Certificate as to amount ordered to be paid

- (1) A party entitled to recover any amount ordered by the Commission to be paid may apply for a certificate under section 362 of the 1998 Act by lodging a statutory declaration containing and verifying a statement of:
 - (a) the date of the order, and
 - (b) the amount of money originally payable under the order, and
 - (c) the amount of costs originally payable under the order, if that amount has been fixed, and
 - (d) the total amount, if any, paid by the debtor under the order in reduction of the amount payable, and
 - (e) the total amount of any credits accrued in reduction of the amount payable otherwise than by payment, and
 - (f) the amount or amounts on which, and the date or dates from which, the party

claims to be entitled to interest in respect of the amount payable, and

- (g) such other particulars, if any, as are necessary to calculate the balance payable under the order, and
 - (h) the amount payable under the order on the date of making the statutory declaration, and
 - (i) the full name, and the address of the place of residence or business, of the debtor under the order.
- (2) A statutory declaration mentioned in subrule (1) may not be lodged if it is made more than 14 days before the day on which it is submitted for lodging.
- (3) The amount certified by the Registrar must not exceed the amount verified in accordance with subrule (1) (h).

91 Interpreters

- (1) Subject to subrule (2), only interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) may be used in proceedings before the Commission.
- (2) In any proceedings before the Commission requiring interpreters in languages for which interpreters are yet to be accredited by NAATI, or in circumstances where the Registrar determines it is otherwise necessary in view of the unavailability of NAATI-accredited interpreters, the Registrar may approve an interpreter or interpreters for use in the proceedings.

92 Continuation of proceedings in the case of death or bankruptcy and substitution of parties

- (1) If a party dies or becomes bankrupt but a claim in the proceedings survives, the proceedings do not abate by reason of the death or bankruptcy.
- (2) If the interest or liability of a party in respect of any proceedings passes by assignment, transmission, devolution or otherwise to another person, the Commission may make orders for the addition, removal or re-arrangement of parties, and may make orders for the further conduct of the proceedings.
- (3) The Commission may act under subrule (2) on application by a party or by a person to whom the interest or liability passes, or of its own motion.
- (4) If the Commission orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order have effect in relation to the new party as if that party were the old party, unless the Commission otherwise orders.

- (5) An administrator or executor may continue or defend proceedings in like manner as if he or she were a party claiming or defending in his or her own right. If it appears to the Commission that a deceased person was interested, or that the estate of the deceased person is interested, in any matter in question in the proceedings and there is no personal representative, the Commission may appoint a person, with the person's consent, to represent the estate for the purposes of the proceedings.
- (6) In the case of the death of a party, the Commission may order that the proceedings be dismissed if no application has been made for an order under subrule (2).