

1990—No. 766

COMPENSATION COURT ACT 1984—RULE

NEW SOUTH WALES



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PART 1—PRELIMINARY

Short title

1. These rules may be cited as the “Compensation Court Rules 1990”.

Commencement

2. These rules have effect on and from 1 January 1991.

Workers’ Compensation Rules

3. (1) Subject to subrule (2) and to Part 29 Division 1, the Workers’ Compensation Rules do not apply to proceedings in the Court, whether those proceedings were or are commenced before or after the commencement of these rules.

(2) Anything done in respect of any proceedings in the Court in conformity with the Workers’ Compensation Rules before the commencement of these rules shall be as valid as if it had been done in conformity with these rules.

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Interpretation

5. (1) In these rules—

“**compensation**” includes any monetary benefit under the Compensation Act;

“**Compensation Act**” means the Workers Compensation Act 1987;

“**corporation**” includes any body of persons that may by law sue or be sued, whether in its own name or in the name of any officer or other person;

“**document**”, when used other than to refer to a document filed or to be filed, has the meaning that it has under section 21 (1) of the Interpretation Act 1987;

“**file**”, in relation to a document, means lodge at the registry for inclusion in the record of the Court;

“**insurer**”, in relation to an employer or other person as to whom a question arises as to his liability for compensation, means the insurer of the employer or other person under section 155 (1) of the Compensation Act;

“**medical practitioner**” means a person registered under the Medical Practitioners Act 1938 or under any law of another State or Territory of the Commonwealth for the registration of persons practising the profession of medicine;

“**originating process**”, in relation to any proceedings, means the document by the filing of which the proceedings are commenced;

“**proceedings**” means proceedings in the Court;

“**registry**” means a registry of the Court, and in respect of any proceedings means the registry in which the originating process in relation to the proceedings was filed;

“**the Act**” means the Compensation Court Act 1984;

“**the rules**” means these rules;

“**Workcover Authority**” means the Workcover Authority constituted under the Workcover Administration Act 1989;

“**Workers Compensation Rules**” means the rules made under the Workers’ Compensation Act 1926, and published in Government Gazette No. 96 of 30 July 1976, as amended.

(2) A reference in the rules to a worker or to a dependant of a worker has the same meaning as it has when made in the Compensation Act.

(3) A reference in the rules to an address, other than an exchange box in a document exchange, is a reference to the address including the postcode number appropriate to that address.

(4) Where under the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

Adherence to and relief from rules

6. (1) Subject to subrule (2) and to rule 7, the practice in the Court shall be the practice provided by the Act, the Compensation Act or the rules.

(2) The Court may if it thinks fit on terms dispense with compliance with any of the requirements of the rules, either before or after the occasion for the compliance arises.

(3) The general practice of the Court prescribed by the rules shall apply to all proceedings authorised by any existing or future Act to be commenced, taken or continued in the Court, except in so far as that practice is inconsistent with any provision of or under any such Act.

Procedure wanting or in doubt

7. (1) Where 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 Act, the Compensation Act or the rules, or by or under any other Act, or the person is in doubt as to the manner or form of procedure, the Court may, on application by the person or of its own motion, give directions.

(2) Proceedings commenced in accordance with the directions of the Court shall be well commenced.

(3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

Seal of the Court

8. A registrar shall seal or stamp with the seal of the Court any originating process filed with him, and any award, order, notice, certificate or other process, or any copy thereof, made, given or issued by him, and any document filed with or issued by him and required by the rules to be sealed.

PART 2—ADMINISTRATION

Registries

1. (1) There shall be a registry at Sydney and a registry at each other place the subject of a direction given by the Chief Judge for the purposes of this subrule.

(2) The registries shall be under the control and direction of the registrar, subject to any direction by the Chief Judge or a Judge.

(3) Except on Saturdays, Sundays and public holidays, and whether in vacation or on a Court holiday or otherwise:

- (a) the registry at Sydney shall be open to the public for business between 9.30 in the morning and 4.00 in the afternoon; and
- (b) the registry at any other place shall be open to the public for business between 9.30 in the morning and 1.00 in the afternoon, and between 2.00 and 4.00 in the afternoon.

(4) A registry shall, notwithstanding subrule (3), be kept open to the public for business, or closed for business, at such times on such days as the Chief Judge or a Judge shall direct.

Sittings of the Court

2. The registrar shall from time to time cause to be affixed in some conspicuous place in each of the registries a notice of the places, days and hours at which the Chief Judge has directed that the Court shall sit.

Vacation

3. (1) The Chief Judge shall appoint in each year periods to be called vacation, and one of those periods shall be called summer vacation.

(2) During vacation the Court shall sit on such days only, and for the hearing of proceedings of such types only, as the Chief Judge shall direct.

Court holiday

4. The day after Easter Monday in each year is a holiday to be observed by the Court.

PART 3—VENUE

Where proceedings may be heard

1. (1) Subject to this rule, proceedings shall be heard at Sydney.

(2) Subject to subrules (3) and (4), where proceedings are commenced in a registry at a place other than Sydney, they shall be heard at that other place.

(3) The Court or a registrar may, if it or he thinks fit, and with or without application by any party, order in respect of any proceedings that the proceedings be heard at a specified place other than the place at which they are required under subrule (1) and (2) to be heard, and the proceedings shall be heard at that specified place.

(4) A Judge may if he thinks fit direct that proceedings commenced to be heard before him at any place be continued before him at another place.

(5) Nothing in this rule shall be construed as limiting any function of the Chief Judge under the Act.

Chambers

2. (1) A Judge or registrar in chambers may, in respect of any proceedings, give any decision or make any order which he could lawfully give or make in court and which he considers may be properly given or made in chambers, whether those chambers are situated in Sydney or elsewhere.

(2) A Judge or registrar shall not proceed in chambers under subrule (1) unless he is satisfied that all parties appearing and all other persons properly interested have adequate notice of his intention so to proceed and will have adequate notice of any decision or order that he is likely to give or make in chambers.

Reserved decision

3. (1) Where in any proceedings a Judge reserves his decision on any question of fact or law, he may—

- (a) give his decision in court at any place at which the Court is sitting, or in chambers in accordance with rule 2; or
- (b) draw up his decision in writing, sign it and forward it to a registrar.

(2) Where a registrar receives a decision forwarded to him under subrule (1) (b), he shall, after giving at least 24 hours' notice to the parties to the proceedings, read or otherwise publish the decision at a convenient time and place specified in the notice, whether or not the Court is sitting at that place at that time.

(3) A decision given by a Judge under subrule (1) (a) or read or otherwise published by a registrar under subrule (2) shall take effect on the day on which it is given, read or otherwise published and shall be as valid as if given by the Judge at the hearing of the proceedings to which the decision relates.

Adjournment

4. The Court may, on terms, adjourn any sittings or the hearing of any proceedings in such manner as the Court thinks fit.

PART 4—TIME

Reckoning of time

1. (1) Any period of time fixed by the Act or the rules, or by or under the Compensation Act, for the doing of any act in or in connection with any proceedings, or fixed by any decision or order or by any document in the proceedings, shall be reckoned in accordance with this rule.

(2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Where, apart from this subrule, the period in question, being a period of 5 days or less, would include a day on which the registry relevant to the proceedings in which the period is to be reckoned is closed, that day shall be excluded.

(4) Where the last day for doing a thing in respect of any proceedings is a day on which the registry relevant to the proceedings is closed, and by reason thereof the thing cannot be done on that day, the thing may be done on the next day on which the registry is open.

Extension and abridgment

2. (1) Subject to subrule (4), the Court may, on terms, by order extend or abridge any time fixed by the rules or by any decision or order.

(2) The Court may extend time under subrule (1) as well after as before the time expires, whether or not an application for the extension is made before the time expires or at all.

(3) The period within which a person is required by the rules or by an order to serve, file or amend any document may be extended by consent, without an order for extension.

(4) The Court shall not extend or abridge the time fixed by the rules for requesting the Court to state a case for the decision of the Supreme Court.

Fixing time

3. Where no time is fixed by the Act or the rules, or by or under the Compensation Act, or by any decision or order of the Court, for the doing of any thing in or in connection with any proceedings, the Court may, by order, fix the time within which the thing is to be done.

Running of time during summer vacation

4. In the period from the beginning of the day on which the summer vacation begins until the end of the 14th January next following, time shall not, unless the Court otherwise orders, run so as to put any party in default in respect of any act for the doing of which a time is fixed by the rules or by any decision or order of the Court, but, subject to Part 2 rule 3 (2), business may be done during that period.

PART 5—COMMENCEMENT OF PROCEEDINGS

Division 1—Application for Determination and General

Originating process

1. Except as otherwise provided in the rules or by or under any Act, the originating process in respect of any proceedings shall be an application for determination.

Validity for service

2. (1) For the purpose of service an originating process shall be valid until the expiration of 6 months after the date on which it is filed or for such further period as the Court may direct.

(2) Nothing in this rule prevents the Court from making an order striking out any proceedings on the grounds of undue delay by the applicant or appellant in serving the originating process.

(3) Nothing in this rule prevents an applicant or appellant from commencing fresh proceedings by lodging another originating process.

Time of commencement

3. Proceedings shall be commenced when the originating process in respect of the proceedings is filed.

Particular proceedings commenced by Application For Determination

4. Without limiting the generality of rule 1, but subject to this Part, proceedings—

- (a) under section 144 (1) or 145 (3) of the Compensation Act in respect of the Uninsured Liability and Indemnity Scheme;
 - (b) for an order for further expenses under section 62 of the Compensation Act;
 - (c) for a review of a weekly payment under section 55 of the Compensation Act;
 - (d) for the commutation of a weekly payment under section 51 of the Compensation Act;
 - (e) under section 16 of the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 in respect of bush fire fighters' compensation;
 - (f) under section 21 of the Police Regulation (Superannuation) Act 1906; and
 - (g) under section 29 of the Sporting Injuries Insurance Act 1978,
- shall be commenced by the filing of an application for determination.

Applications under the Police Regulation (Superannuation) Act 1906

5. In respect of proceedings under section 21 of the Police Regulation (Superannuation) Act 1906 relating to a decision of—

- (a) the Police Superannuation Board—that Board; or
 - (b) the Commissioner of Police—that Commissioner,
- shall be a necessary party to the proceedings.

Uninsured Liability and Indemnity Scheme

6. The WorkCover Authority shall be a necessary party to any application under section 144 (1) or 145 (3) of the Compensation Act.

Division 2—Proceedings Commenced by Notice of Motion**Uninsured Liability and Indemnity Scheme—incidental proceedings**

7. Where a matter or question for determination by the Court under the Uninsured Liability and Indemnity Scheme is already the subject of proceedings, proceedings to determine the matter or question may be commenced by notice of motion under Part 14 in the proceedings already before the Court.

Application for further medical expenses etc.

8. Where a worker who has commenced proceedings for compensation seeks to apply for an order under section 62 (6) of the Compensation Act he may so apply by notice of motion under Part 14 in the proceedings.

Application for suspension of weekly payment

9. An application for an order for suspension of a weekly payment, or for a declaration that a worker's right to take or prosecute any proceedings under the Compensation Act has been suspended, until, pursuant to section 130 of that Act, the worker submits to medical examination may be made, whether or not proceedings have been commenced in respect of the subject matter to which the weekly payment relates, by notice of motion under Part 14.

Compensated worker ceasing to reside in Australia

10. (1) An application for a determination of the Court under section 53 of the Compensation Act shall be commenced by notice of motion under Part 14, supported by affidavits.

(2) The affidavits mentioned in subrule (1) shall include affidavits by the worker and a medical practitioner who has examined the worker.

(3) The affidavits mentioned in subrule (1) shall verify—

- (a) the circumstances in which the application is made;
- (b) the age and a description of the applicant sufficient to identify him;
- (c) particulars as to the injury, the nature and extent of the incapacity resulting from the injury, and the history and treatment of the worker since the injury;
- (d) the amount and duration of the weekly payment;
- (e) the worker's present and proposed places of residence; and
- (f) the detail of any award or previous proceedings in respect of the injury.

Proceedings to perpetuate testimony

11. Proceedings under Part 21 rule 12 (2) shall be commenced by notice of motion under Part 14, supported by affidavits.

Division 3—Appeals to the Court**Application of this division**

12. This division applies to an appeal to the Court brought under any existing or future Act other than the Act or the Compensation Act, and so applies subject to any provision of or under the Act under which the appeal is brought.

Notice of appeal

13. (1) The originating process for the commencement of an appeal to which this Division applies shall be a notice of appeal.

(2) A notice of appeal mentioned in subrule (1) shall contain—

- (a)** particulars of the decision appealed against;
- (b)** particulars of the grounds of appeal on which the appellant intends to rely, or a reference to the affidavit in which those particulars are contained; and
- (c)** where it is not intended to serve the notice of appeal on any person, a statement to that effect.

(3) The appellant at the time of lodging a notice of appeal as mentioned in subrule (1) shall also lodge—

- (a)** a copy of the application or other originating process which was before the authority which made the decision appealed against; and
- (b)** a copy of the decision or determination the subject of the appeal.

Time for appeal

14. An appeal to which this Division applies shall be commenced within 28 days after the decision appealed against, or within such further time as may be ordered by the Court.

Service

15. A notice of appeal mentioned in rule 13 shall, unless service is dispensed with by order of the Court made at or before the hearing, be served on every respondent to the appeal.

Affidavits

16. A party to an appeal to which this Division applies who intends to reply on any affidavit shall file the affidavit and serve it on each other party to the appeal (except a party on whom service of the notice of

appeal is dispensed with as mentioned in rule 15) in sufficient time before the hearing to enable that other party to reply on affidavit, or within such period as the Court may order.

Answer by respondent

- 17.** A respondent to an appeal to which this Division applies—
- (a) who files an affidavit in the appeal shall include in the first affidavit so filed an address for service; or
 - (b) who does not file such an affidavit shall, before being heard in the appeal, file and serve on the appellant a notice of appearance.

Setting down for hearing

- 18. (1)** Where in respect of an appeal to which this Division applies—
- (a) a respondent has filed an affidavit or notice of appearance; or
 - (b) no respondent has filed an affidavit or notice of appearance, and the appellant has filed an affidavit of service of the notice of appeal showing that the notice of appeal was served on a respondent more than 14 days previously,

the registrar shall set the appeal down for call-over or mention for the purpose of fixing a hearing date, and shall advise the parties of the setting down.

- (2) The provisions of this rule apply subject to any order of the Court.

Procedure generally

19. Except as provided in this Division, the procedures to be observed in respect of an appeal to which this Division applies shall be the procedures prescribed in respect of proceedings commenced by application for determination, subject to such modifications to those procedures as may be necessary to give effect to this rule.

Appeals under Workmen's Compensation (Broken Hill) Act 1920

20. (1) An appellant under section 14 of the Workmen's Compensation (Broken Hill) Act 1920 shall, within the time limited for commencing the appeal, serve the notice of the appeal on the Chairman of the Joint Committee appointed under that Act.

(2) On being served with a notice of appeal under subrule (1), the Chairman of the Joint Committee shall sign a statement of the case with the written consent of the parties to the appeal, or, if any of them does not agree to the statement, without the consent of that party.

(3) On a statement being signed under subrule (2), the Secretary to the Joint Committee shall send the statement and a copy thereof to the registrar, and a copy thereof to each party to the appeal.

PART 6—PARTIES AND CLAIMS

General

1. In this Part, “**respondent**” includes “insurer”.

Joinder of claims

2. An applicant may, in one proceedings, apply for relief against the same respondent in respect of more than one claim.

Joinder of parties generally

3. Two or more persons may be joined as applicants or respondents in any proceedings—

(a) where—

(i) if separate proceedings were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the proceedings; and

(ii) all rights claimed in the proceedings (whether they are joint, several or alternative) are in respect of or arise out of the same death or injury, or series of deaths or injuries; or

(b) where the Court gives leave so to do.

Joint right

4. (1) Where, in any proceedings, the applicant claims relief to which any other person is entitled jointly with him—

(a) all persons so entitled shall be parties to the proceedings; and

(b) any of them who does not consent to being joined as an applicant shall be made a respondent.

(2) Subrule (1) applies subject to any Act, and subject to section 62 of the Bankruptcy Act 1966 (Commonwealth), and applies unless the Court gives leave to the contrary.

Leave under rules 3 and 4

5. (1) The Court may grant leave under rule 3 before or after the joinder and may grant leave under rule 4 (2) before or after the non-joinder.

(2) An applicant may apply for leave under rule 3 or rule 4 either before or after lodging his originating process and may so apply without serving notice of the motion on any person on whom the originating process has not been served.

Common liability

6. (1) Where, in any proceedings, a respondent is jointly liable with some other person and also severally liable, that other person need not be made a respondent in the proceedings.

(2) Where persons are jointly, but not severally, liable in respect of a death or injury and proceedings in respect of that death or injury are commenced against some but not all of those persons, the Court may, on the application of any respondent in the proceedings, by order stay the proceedings until the other persons so liable are added as respondents.

Separate representation of party re several interests

7. (1) Where an insurer under a policy of insurance or indemnity issued to an employer is entitled to defend, or make any application in, any proceedings in the name of the employer, but in respect of part only of the subject of the proceedings, the Court may if it thinks fit, on terms, at any stage of the proceedings grant leave to the employer to appear separately and be separately represented in respect of that part.

(2) Where the Court grants leave under subrule (1) to an employer in respect of a part of the subject of any proceedings, any document subsequently filed by or in the name of the employer in the proceedings shall clearly identify the part, including any period of insurance, in respect of which it is filed.

Inconvenient joinder

8. Where any joinder of parties or claims may embarrass or delay hearing of the proceedings or is otherwise inconvenient, the Court may order separate hearings or make such other order as the Court thinks fit.

Misjoinder and non-joinder of parties

9. (1) No proceedings shall be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party.

(2) The Court may in any proceedings determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

Addition of parties

10. Where a person who is not a party to any proceedings—

- (a) ought to have been joined as a party; or
- (b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon,

the Court, on application by him or by any party or of its own motion, may, on terms, order that he be added as a party and make orders for the further conduct of the proceedings.

Removal of parties

11. Where a party—

- (a) has been improperly or unnecessarily joined; or
- (b) has ceased to be a proper or necessary party,

the Court, on application by any party, or of its own motion, may, on terms, order that he cease to be a party and make orders for the further conduct of the proceedings.

Death, transmission, etc.

12. (1) Where a party dies or becomes bankrupt but a claim in the proceedings survives, the proceedings shall not abate by reason of the death or bankruptcy.

(2) Where the interest or liability of a party passes by assignment, transmission, devolution or otherwise to another person, the Court 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 Court 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.

Further conduct of proceedings

13. (1) Without limiting the generality of the powers of the Court under rules 10, 11 and 12, orders under those rules for the further conduct of proceedings may include orders relating to—

- (a) service of the order and other documents in the proceedings;
- (b) amendment;
- (c) the filing of answers by added respondents; and
- (d) substitution of one party for another party or a former party.

(2) Where the Court 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 shall, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but the filing of an answer by the old party shall not dispense with the filing of an answer by the new party.

(3) Subject to subrule (2), where a new party is added pursuant to an order under rule 10 or rule 12, the date of commencement of the proceedings so far as concerns him shall be the date of filing of the originating process amended to add him as a party, or, where an amended originating process is not filed, the date of the amendment adding him as a party.

Failure to proceed after death of party

14. (1) Where—

- (a) a party dies but a claim in the proceedings survives his death; and
- (b) an order under rule 12 for the addition of a party in substitution for the deceased party is not made within 3 months after the death,

the Court may, on application by a party or by a person to whom liability on the claim survives on the death, order that, unless within a specified time after service of the order in accordance with subrule (2), a party is added in substitution for the deceased party, the proceedings shall be dismissed so far as concerns any claim for or against the person to whom the claim in the proceedings or the liability thereon, as the case may be, survives on the death.

(2) On making an order under subrule (1), the Court shall give such directions as it thinks fit for service of the order on the persons (whether parties or not) interested in continuing the proceedings.

Executors and administrators

15. An executor or administrator may continue or defend proceedings in like manner as if he were a party claiming or defending in his own right.

Deceased person

16. (1) Where in any proceedings (other than proceedings commenced under rule 17) it appears to the Court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party—

(a) order that the proceedings continue in the absence of a person representing the estate of the deceased person; or

(b) by order (with the consent of the person appointed) appoint a person to represent that estate for the purpose of the proceedings.

(2) An order under subrule (1), and any decision or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceedings.

(3) Before making an order this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as the Court thinks fit.

Application where worker deceased

17. (1) In proceedings brought by any dependants of a deceased worker on behalf of some or all of the dependants, the personal representative (if any) of the worker shall be joined as a respondent if he is not already an applicant.

(2) In proceedings brought by some only of the dependants of a deceased worker on behalf of some or all of the dependants, the other dependants, and any other person claiming to be a dependant, of the worker shall be joined as respondents.

(3) Where an injured worker dies leaving no dependants, proceedings to recover his reasonable burial or cremation expenses may be continued—

(a) by the personal representative of the worker; or

(b) by any person to whom any such expenses are due or who has paid any such expenses.

(4) In proceedings brought under subrule (3) (b)—

(a) the personal representative (if any) of the worker, and any person referred to in subrule (3) (b) who has not been joined as an applicant, shall be joined as a respondent; and

(b) if the amount awarded is insufficient to meet the expenses sought to be recovered, the Court may give directions for the apportionment of that amount.

Conduct

18. The Court may give the conduct of the whole or any part of any proceedings to such party as it thinks fit.

Representation: concurrent interests

19. (1) Where numerous persons have the same interest in any proceedings, the proceedings may, unless the Court otherwise orders, be continued by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings pursuant to this rule the Court, on the application of the applicant in the proceedings, may, on terms, appoint any one or more of the respondents or other persons (as representing whom the claim is made against the respondents) to represent all, or all except one or more, of those persons in the proceedings.

(3) Where, under subrule (2), the Court appoints a person who is not a respondent, the Court shall make an order under rule 10 adding him as a respondent.

(4) A decision given or order made in proceedings pursuant to this rule shall be binding on all the persons as representing whom the applicants claim or, as the case may be, the respondents are claimed against, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(5) An application for leave under subrule (4) shall be made by motion, notice of which shall be served on the persons against whom it is sought to enforce the decision or order.

(6) Notwithstanding that a decision or order to which an application under subrule (5) relates is binding on the person against whom the application is made, that person may dispute liability to have the decision or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from the liability.

(7) This rule does not apply to proceedings concerning—

- (a) the administration of the estate of a deceased person; or
- (b) property subject to a trust.

PART 7—INTEREST**Claim for interest**

1. Unless the Court otherwise orders, which order may be on terms, interest under section 19 (1) of the Act shall not be ordered to be paid in any proceedings unless there is included in the originating process in respect of the proceedings a statement that interest will be claimed, and particulars of the period or periods for which, the rate or rates at which,

and (where the amount or amounts are known) the amount or amounts on which, interest is intended to be claimed.

Rates

2. Unless the Court otherwise orders, which order may be on terms, the rate at which interest under section 19 (1) of the Act shall be ordered to be paid shall, in respect of any part of a period, be the rate per centum yearly prescribed in respect of that period for the purposes of section 95 (1) of the Supreme Court Act 1970, or the rate or rates specified under rule 1 in respect of that part, whichever is less.

PART 8—SERVICES

Interpretation

1. In this Part—

“**copy**” means a true copy of a document to be served, and where the document is filed before service means a true copy of the document sealed with the seal of the Court;

“**party**” means the person to be served with a document;

“**service**” means service of a document required or permitted by the Act or the rules, or by or under the Compensation Act, to be served in the conduct of any proceedings.

Who may serve process

2. Except where otherwise provided by or under any Act, service may be effected by any person over the age of 16 years.

Mode of service

3. (1) Service may be personal, but need not be personal unless required by the rules or any order.

(2) Personal service may be effected by delivering a copy to the party personally.

(3) A copy may be delivered to a person by handing it to him or by leaving it in his presence and informing him of its nature.

(4) Except where personal service is required, service may be effected by delivering a copy at the residence or place of business of the party, to a person apparently not less than 16 years old and apparently residing at that residence or employed at that place of business.

(5) It shall not be necessary to the regular service of any document that the original thereof be produced to any person.

(6) In this rule, “**place of business of the party**” means a place of business of which the party is the proprietor or one of the proprietors.

When service may not be effected

4. Service may not be effected on Christmas Day or Good Friday.

Doubtful service

5. (1) Where service of any document has not been personal, and the Court is satisfied on the evidence before it that the service did not come to the knowledge of the party within a reasonable time, or on that evidence is in doubt, the Court shall not allow any fresh step in the proceedings to be taken against the party, but shall adjourn or strike out the proceedings, or order fresh process to issue, as to it may seem just.

(2) Where it is impracticable for any reason to effect service of any document, but steps have been taken for the purpose of bringing, or having a tendency to bring, the document to the notice of the party, the Court may if it thinks fit by order direct that the service be deemed to have been effected on a date specified in the order.

(3) Where a party lodges any document for filing in reply to a document alleged to have been served on him, he shall be taken to have waived any objection he may have to the service unless he lodges and serves notice of that objection at the time when he lodges the document.

Service on solicitor (originating process)

6. Where a solicitor makes on a copy of any originating process a note that he accepts service of the process on behalf of any person, the process shall be taken to have been served on that person on the date on which a copy of the process was delivered to the solicitor or left at his office.

Service on solicitor (other documents)

7. (1) This rule does not apply to or in respect of the service of any originating process, or document as to which personal service is required.

(2) Where a party has on the record of the Court a solicitor acting for him, delivery of a copy to the solicitor, or leaving a copy at the solicitor's office, or sending a copy by post addressed to the solicitor at his office, shall be taken to be good service on the party.

Address for service

8. (1) An address for service shall be the address of a place at which documents in the proceedings in which the address is notified may, during ordinary business hours, be left for the person whose address for service it is, and to which documents in the proceedings may be posted for the person.

(2) The address for service in any proceedings of a person who has on the record of the Court a solicitor acting for him in the proceedings shall be the office of the solicitor, or of his agent in the place at which is situated the registry relevant to the proceedings.

(3) The address for service in any proceedings of a person who acts in the proceedings without a solicitor shall be an address notified by the person in the first document filed by him in the proceedings.

(4) A person may change his address for service by filing and serving a notice of the change showing his new address for service.

Service at address for service

9. (1) This rule does not apply to or in respect of the service of any originating process, or document as to which personal service is required.

(2) Where a person has, by the operation of rule 8 (2) or (3), an address for service in any proceedings, leaving a copy at, or sending a copy by post addressed to the person at, that address for service shall be taken to be good service on the person.

(3) Where the address for service of a person to be served is the office of a solicitor who has an exchange box in a document exchange, in the State, of Australian Document Exchange Pty Limited, leaving a copy, addressed to that solicitor, in that exchange box or at another exchange box for transmission to that exchange box shall be taken to be good service on that person on a day 2 days after the copy is so left.

Time of service by post

10. Where any document (including an originating process) is served by sending it by post, service shall be deemed to be effected on the seventh day after the posting.

Prisoner

11. (1) Where a person confined in a prison is a party, service on him may be effected by delivering a copy at the prison to the officer in charge thereof.

(2) Where for the purpose of any proceedings—

- (a) a document is handed, or information or a request is conveyed, to the officer in charge of a prison for delivery to a party who is confined in the prison; or
- (b) a party who is confined in a prison hands a document, or conveys information or a request, to the officer in charge of the prison for delivery to the registrar,

the officer shall ensure that the document, information or request is so delivered as soon as practicable.

Where party “keeps house”

12. Where a party or person keeps the place of residence or place of business of a party closed, or by any means prevents access being obtained thereto, and remains therein in order to obstruct or hinder the delivering to the party or person of a copy which would take effect as service on the party, service on the party may be effected by—

- (a) placing the copy in the mail-box appropriate to, or affixing the copy on any outer door of, the place of residence or place of business, or, if access cannot be obtained to any such mail-box or door, affixing the copy on some part of the place of residence or place of business, or of any fence or wall surrounding it, as near as practicable to the principal door or entrance; and
- (b) within 24 hours after so placing or affixing the copy sending by post to the party at the place of residence or place of business a notice informing him of the placing or affixing.

Where violence threatened

13. Where the person attempting service is prevented by the violence or threat of violence of any person from delivering a copy for the purpose of effecting service, he may deliver the copy by leaving it as near as practicable to the person to whom he intended to deliver it.

Service under contract

14. Where a party has before or after the commencement of any proceedings agreed that any document in the proceedings may be served on him or on some other person on his behalf in a manner or at a place specified in the agreement, service in accordance with the agreement shall be sufficient service on the party.

Identity

15. For the purposes of the proof of service, evidence of a statement by a person of his identity, or that he holds some office, is evidence of his identity or that he holds the office, as the case may be.

Substituted service

16. (1) Where for any reason it is impracticable to effect service of any document in any of the modes prescribed for that service, the Court may, on application supported by an affidavit 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) Where the Court makes an order subrule (1) it may order that service be taken to be effected on the happening of any specified event, or on the expiry of any specified time.

(3) Without limiting the generality of subrule (1), where the person sought to be served is a party as to whom a matter or question arises as to payment by him of compensation, the Court may order under subrule (1)—

- (a) that the document be served on the insurer of that person; or
- (b) that any notice published under section 142 (1) of the Compensation Act stand in lieu of service.

Service on WorkCover Authority

17. Service on the Workcover Authority may be effected by delivering a copy to an officer of the Authority at, or by sending a copy by post addressed to the Authority at, the office of the Authority, or by leaving a copy, addressed to the Authority, in the Authority's exchange box in a document exchange of Australian Document Exchange Pty Limited, or at another exchange box for transmission to that exchange box.

PART 9—PARTICULARS**Interpretation**

1. In this Part, “**relevant document**” means an originating process, an answer, or a third or subsequent party notice, as the case may indicate or require, and includes any such document as amended.

Sufficiency

2. (1) A party filing a relevant document shall include in the document such particulars of any claim, defence or other matter alleged as are necessary to enable the opposite party to identify the case he is required by the document to meet.

(2) Rule 3 does not affect the generality of subrule (1).

Out-of-pocket expenses etc.

3. Where a party seeks to include in his claim against another party moneys which he has paid, or is liable to pay, he shall give in a relevant document the best particulars he can give of those moneys.

Manner of giving particulars

4. (1) Where rule 2 or rule 3 requires particulars to be given in a relevant document and it is inconvenient to set those particulars out in the relevant document, they shall be set out in a separate document referred to in the relevant document and filed and served with the relevant document.

(2) Notwithstanding subrule (1), where the necessary Particulars exceed one page and have, before the date on which the relevant document is filed, been given to the party on whom the relevant document is required to be served (or to whom a copy of the relevant document is required to be given or sent), and the relevant document shows the date on which the particulars were given—

- (a) subrule (1) shall not require that the particulars be filed or served; but
- (b) the Court may order that a copy of the particulars be filed and served.

Order for particulars

5. (1) The Court may, on terms, order a party to file and serve on any other party—

- (a) particulars of any claim, defence or other matter stated in a relevant document filed by him; or
- (b) a statement of the nature of the case on which he relies.

(2) Without limiting the generality of subrule (1), where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may, on terms, order that party to file and serve on any other party—

- (a) where he alleges knowledge, particulars of the facts on which he relies; and
- (b) where he alleges notice, particulars of the notice.

(3) Where the Court makes an order under this rule, it may, if it thinks fit, by the same or any subsequent order direct that, if the order made under this rule is not complied with within a period of time stated by the Court, any proceedings brought, or any document filed, by the party in default shall be struck out, or that any such proceedings shall be stayed until the order made under this rule is complied with.

(4) The Court shall not make an order under this rule before the filing of an answer in any proceedings unless, in the opinion of the Court, the order is necessary or desirable to enable the respondent to file the answer, or for some other special reason.

Schedule of earnings

6. In any application where the quantum of weekly compensation is or may be an issue and there is or may be a dispute in respect of the actual or probable earnings of a worker during any relevant period the following provisions shall, unless the court otherwise orders, have effect:

(1) The applicant shall file and serve on each other party not later than 21 days before the hearing date, a schedule containing full particulars of such earnings during such period.

(2) If any party disputes the accuracy of any matter in the schedule that party shall, not later than 7 days after service, file and serve a schedule containing its allegations of such earnings.

(3) A matter not so disputed shall be deemed to be admitted.

PART 10—DEFAULT JUDGMENT, SUMMARY JUDGMENT ETC.

Default judgment

1. (1) Where a respondent from whom an applicant claims compensation fails—

- (a) to file an answer as referred to in Part 11;
- (b) to deny wholly or partially in an answer filed by him that he is liable to pay the compensation claimed; or
- (b) to set out in an answer filed by him a sufficient statement of the grounds for any such denial,

within the time limited for the filing of an answer, the applicant may apply to the Court for default judgment.

(2) An application for default judgment may be made by filing an affidavit of service of the originating process in the proceedings and filing and serving (at least 3 days before the date fixed by the registrar for the hearing of the application for default judgment) notice of intention to apply for default judgment.

(3) On the hearing of an application for default judgment the Court may make such determination in the proceedings or give such directions for the further conduct of the proceedings as it thinks fit.

Summary judgment

2. (1) Where, on motion under Part 14 by an applicant in relation to any claim for compensation or any part of any such claim—

(a) there is evidence of the facts on which the claim or part is based; and

(b) there is evidence given by the applicant or by some responsible person that, in the belief of the person giving the evidence, the respondent has no grounds on which to contest the claim or part,

the Court may, at any time, make such award in favour of the applicant on that claim or part as the nature of the case requires.

(3) An award made under this rule may, on sufficient cause being shown, be set aside, on terms, by order of the Court.

Summary stay or dismissal

3. (1) Where in proceedings on a claim for compensation it appears to the Court that in relation to the claim or to any part of the claim—

(a) no reasonable grounds for the claim are disclosed;

(b) the proceedings are frivolous or vexatious; or

(c) the proceedings are an abuse of the process of the Court,

the Court may order that the proceedings be stayed or dismissed generally or in relation to any part of the claim.

(3) A respondent who seeks an order under this rule may apply for the order on motion under Part 14.

PART 11—APPEARANCE AND ANSWER**Right of appearance**

1. (1) A party to any proceedings may appear—

- (a) by a barrister or solicitor retained by or on behalf of that party, or by a solicitor employed (as an agent or otherwise) by a solicitor so retained; or
- (b) if no barrister or solicitor is so retained and—
 - (i) if that party is a natural person—by himself; or
 - (ii) if that party is a corporation, and the Court so approves—by an officer of the corporation authorised in that behalf by the corporation in a document signed by the secretary or other public officer of the corporation and lodged with the registrar,

or by another person allowed by leave of the Court granted in the particular proceedings to appear on that party's behalf.

(2) Subject to and in accordance with the rules and any provision made by or under the Compensation Act, a person appearing in any proceedings may address the Court and examine and cross-examine witnesses.

(3) A person who is not a barrister or solicitor retained as mentioned in subrule (1) shall not be entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person in any proceedings.

(4) Subrule (3) does not operate to prevent an employee who appears on behalf of his employer in the ordinary course of his employment from receiving wages or salary for so appearing.

(5) No amount paid to a person who appears in any proceedings and who is not a barrister or solicitor retained as mentioned in subrule (1) shall be allowed as costs between party and party.

Notice of appearance

2. (1) A respondent to proceedings shall, before being heard in the proceedings, and unless he has filed an answer—

- (a) file a notice of appearance; and
- (b) serve the notice of appearance on all other parties to the proceedings and any insurer concerned in the proceedings.

(2) A notice of appearance under this rule may be conditional.

(3) Effect shall be given to a notice of conditional appearance subject to any conditions contained in the notice.

Answer

3. (1) A respondent to proceedings may, not later than 28 days after service on him of the originating process in the proceedings, file, and serve on all other parties to the proceedings, an answer setting out—

- (a) any grounds on which he intends to deny wholly or partially the applicant's claim;
- (b) any respects in which he alleges that the applicant's particulars are inaccurate or incomplete, including full particulars of any such allegation; and
- (c) any fact and the effect of any document which he intends to bring to the notice of the Court or on which he intends to rely.

(2) Without limiting the generality of subrule (1), where a respondent intends—

- (a) to deny wholly or partially that he is liable to pay to the applicant the compensation claimed, he shall set out in his answer a statement of the grounds on which and the extent to which he denies that he is so liable; or
- (b) to reply upon the fact that—
 - (i) any notice of injury or of incapacity or death was not given as required by the Compensation Act and the respondent is prejudiced in his defence by the want of that notice; or
 - (ii) that the claim for compensation was not made within the time limited by the Compensation Act,

he shall set out in his answer a detailed statement of that fact.

(3) A respondent shall not, at any hearing of the proceedings, except by consent of the applicant or by leave, given on terms, of the Court, raise any matter of defence not raised in the answer filed by him under this rule.

(4) Without limiting the generality of subrule (3), the applicant's claim and particulars, and any respondent's liability under the Compensation Act to pay the compensation claimed, shall, subject to—

- (a) any matter of defence contained in an answer filed by the respondent under this rule;
- (b) any consent of the applicant; or
- (c) any leave given by the Court (which leave may be given on terms) to file an answer or amend an answer,

be taken to be admitted for the purposes of the proceedings.

(5) For the purposes of subrule (3) and (4), a matter of defence may be raised in an answer by a denial or by a statement of non-admission, and either expressly or by necessary implication, and either generally or as to any particular allegation.

PART 12—SETTING DOWN FOR HEARING, CALL-OVER AND PRE-HEARING CONFERENCE

Interpretation

1. This Part applies to proceedings other than proceedings to which Division 2 or 3 of Part 5 applies.

Request for listing

2. (1) Where in respect of any proceedings the time limited by Part 11 rule 3 (1) for the filing of an answer has expired and—

(a) an answer has been filed; or

(b) an affidavit of service of the originating process has been filed, any party other than a respondent who has not filed an answer may file a request for listing, accompanied by as many copies as there are parties to the proceedings.

(2) Where a request for listing is filed, the registrar shall—

(a) in respect of proceedings for hearing in Sydney or Newcastle, fix a listing date; or

(b) in respect of proceedings for hearing elsewhere, fix a date for the call-over of the proceedings under rule 4,

endorse the date so fixed on the request for listing and each copy of the request lodged with him, seal the copies and return them to the party who filed the request.

(3) A party to whom copies are returned under subrule (2) shall as soon as practicable serve one such copy on each other party to the proceedings.

(4) Where a request for listing is not filed within 3 months after the date of commencement of the proceedings in the Court, the registrar shall list the proceedings for mention and advise the applicant of the listing.

(5) At any mention of proceedings referred to in subrule (4) the Court may, if it thinks fit, strike the proceedings out.

Certificate of readiness

3. (1) Where the registrar fixes a listing date under rule 2 (2) (a), the applicant shall, and any respondent may, file, and serve on all other

parties, a certificate of readiness in the approved form not later than 21 days before the listing date.

(2) Where the applicant files a certificate of readiness under subrule (1), the registrar shall, by arrangement with the parties or without any such arrangement, fix a date for the hearing of the proceedings.

(3) Where the applicant fails to file a certificate of readiness as required under subrule (1), or files a certificate of readiness that does not include all of the information required by the approved form as is relevant to the proceedings, the registrar shall list the proceedings for mention before the registrar on the listing date.

Call-over and mention

4. (1) At the call-over, or mention under rule 3 (3), of any proceedings a registrar may—

- (a) fix a date or dates for the hearing of the proceedings;
- (b) fix a date for the further call-over or mention of the proceedings;
- (c) under rule 5 require the parties to attend a pre-hearing conference; or
- (d) if satisfied that the proceedings are not ready for hearing, and if he thinks fit, strike the proceedings out on the condition that they may be restored to the list when he is satisfied that they are ready for hearing, and may in such case, except where otherwise provided in section 18 of the Act, make such order as to the costs of the proceedings to date as shall be just.

(2) At the call-over, or mention under rule 3 (3), of any proceedings, a registrar—

- (a) shall consider the preparations for hearing;
- (b) shall, so far as practicable, deal with all matters which may be dealt with on application to the Court before the hearing;
- (c) shall give such directions for the conduct of the proceedings as appear best adapted for the just, quick and cheap disposal of the proceedings, including the making of such orders as may be appropriate relating to admissions, evidence and amendment;
- (d) shall endeavour to secure that the parties make all agreements as to the conduct of the proceedings which ought reasonably to be made by them;
- (e) may record any agreement made by the parties as to the conduct of the proceedings; and

- (f) may record any refusal to make an agreement as to the conduct of the proceedings which ought reasonably to have been made so that the refusal may later be taken into account on questions of costs.

(3) At the call-over, or mention under rule 3 (3), of any proceedings each party shall, so far as practicable—

- (a) move for any order or direction which he wants but for which he has reasonably omitted to make previous application, and which may be made before the hearing; and
- (b) advise of his intention to make application for any such order or direction which may not be made or given at the call-over or mention.

(4) Subject to subrule (5), a party shall not adduce evidence at a call-over or mention under rule 3 (3), except by the leave or direction of a registrar.

(5) Where a party moves at a call-over or mention under rule 3 (3) for an order which, if made otherwise than at the call-over or mention, ought not to be made except on evidence, a party may adduce evidence for the purpose of supporting or opposing the motion.

(6) At the call-over, or mention under rule 3 (3), of any proceedings—

- (a) subject to paragraph (b), each party shall give all such information and produce all such documents to a registrar as that registrar requires for the purposes of this rule;
- (b) a party shall not be required to give any information or produce any document which is privileged from disclosure except with the consent of the person entitled to the privilege;
- (c) a party who gives information or produces a document to a registrar shall, unless the registrar otherwise orders, give the information or produce the document to any other party appearing at the call-over or mention; and
- (d) where a party defaults in compliance with a requirement of a registrar to give information or produce a document for the purposes of this rule, that registrar may—
 - (i) record the requirement and default so that they may later be taken into account on questions of costs;
 - (ii) strike out the whole or any part of the claim or answer of the party in default; or
 - (iii) stay or dismiss the proceedings so far as concerns any claim by the party in default.

Pre-hearing conference

5. (1) A registrar may in respect of any proceedings require the parties to attend a pre-hearing conference before a registrar.

(2) At a pre-hearing conference a registrar may—

- (a) fix a date for the hearing of the proceedings;
- (b) on such terms as he thinks fit adjourn the proceedings, either generally or to a date for call-over, mention or further conference; or
- (c) make such other order regarding the proceedings or the listing of the proceedings as he thinks fit.

PART 13—ADMISSIONS AND SUBMISSION TO AWARD**Voluntary admissions**

1. (1) A party to any proceedings may, by notice served on another party, admit, in favour of the other party, but for the purpose of the proceedings only, the facts specified in the notice.

(2) A party may, with the leave of the Court, withdraw an admission made under subrule (1).

Notice to admit facts

2. (1) A party to proceedings which are contested by the filing of an answer or a third or subsequent party notice may, by notice served on another party, require him to admit, for the purpose of the proceedings only, the facts specified in the notice.

(2) If, as to any fact specified in a notice given under subrule (1), the party on whom the notice is served does not, within 14 days after that service, serve, on the party serving the notice to admit facts, a notice disputing that fact, that fact shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit facts is served in favour of the party serving the notice to admit facts.

(3) A party may, with the leave of the Court, withdraw an admission made under subrule (2).

Decision on admissions

3. (1) Where admissions are made by a party, whether under a requirement under section 24 (1) (b) of the Act, or under the rules, or otherwise, the Court may, on the application of any other party, give any

decision or make any order to which the applicant is entitled on the admissions.

(2) The Court may if it thinks fit exercise its powers under subrule (1) notwithstanding that other questions in the proceedings have not been determined.

Notice to admit documents

4. (1) A party to any proceedings which are contested by the filing of an answer or a third or subsequent party notice may, by notice served on another party, require him to admit, for the purpose of the proceedings only, the authenticity of the documents specified in the notice.

(2) If, as to any document specified in a notice given under subrule (1), the party on whom the notice is served does not, within 14 days after that service, serve, on the party serving the notice to admit documents, a notice disputing the authenticity of the document, the document shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit documents is served.

(3) A party may, with the leave of the Court, withdraw an admission made under subrule (2).

Admission of documents discovered

5. (1) Where a list of documents is served on a party under Part 18, and inspection of any documents specified in the list is permitted to that party under that Part, then, subject to subrule (2), the following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders—

- (a) that the document, if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party—

- (a) has by any document filed by him in the proceedings denied the authenticity of a document; or
- (b) within 14 days after the time limited under Part 18 for inspection of a document, serves on the party giving inspection a notice that he disputes the authenticity of the document,

subrule (1) does not work an admission by the first-mentioned party as to that document.

(3) Where a party serves on another party a list of documents pursuant to Part 18, those parties shall be in the position that they would be in if the latter party had, on the date of service of the list, served on the party serving the list a notice requiring production at the hearing of such of the documents specified in the list as are in the possession, custody or power of the party serving the list.

(4) Subrules (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Part 18 rule 3 as they apply in relation to a list of documents served under that Part.

Restricted effect of admission

6. An admission under this part or under a requirement under section 24 (1) (b) of the Act for the purposes of any proceedings shall not be used—

- (a) against the admitting party in any other proceedings; or
- (b) in favour of any person other than the party in whose favour the admission is made.

Costs

7. (1) Where a party to any proceedings serves a notice under rule 2 (2), 4 (2) or 5 (2) disputing a fact or the authenticity of a document, and afterwards that fact or the authenticity of that document is proved in the proceedings, he shall, unless the Court otherwise orders, pay the costs of proof.

(2) On the taxation of a bill of costs the taxing officer shall not allow the costs of proving any fact or the authenticity of any document—

- (a) which is admitted under any provision of this Part, unless the costs were in the opinion of the taxing officer reasonably incurred before the admission; or
- (b) which, in the opinion of the taxing officer, might reasonably have been, and was not, the subject of a notice under rule 2 (1) or 4 (1), but might not reasonably have been required to be the subject of a notice under rule 1 (1).

(3) This rule applies except where otherwise provided in section 18 of the Act.

Submission to award

8. (1) This rule applies without limiting the generality of rule 3.

(2) An employer who is a party to proceedings for an award of compensation or for determination of any question as to his liability to pay compensation may, at any stage of the proceedings, and whether or not he admits any liability to pay compensation, file and serve a notice stating that he is willing to submit to an award of compensation in the terms set out in the notice.

(3) If the worker who is a party, or the dependants who are parties, to the proceedings file and serve notice of his or their willingness to accept the award as set out in the notice given under subrule (2), the registrar shall cause the proceedings to be listed before the Court, and the Court may make such award or give such directions as to it may appear proper.

(4) If notice under subrule (3) is not filed and served within 28 days after the service of notice under subrule (2)—

- (a) the proceedings shall be continued as though the notice under subrule (2) had not been filed; but
- (b) if an award is not made which is more beneficial to the worker or dependants, as the case may be, than the award as set out in the notice under subrule (2), the employer shall not, unless the Court otherwise orders, be liable for any costs incurred by the worker or dependants after service of that notice.

PART 14—MOTIONS

Application of this Part

1. The provisions of this Part apply to an interlocutory or other application in or for the purposes of or in relation to any proceedings, and any application to which this Part applies shall be made by motion.

Notice

2. (1) Subject to subrule (2), a person shall not move the Court for an order unless before moving he has filed notice of the motion and has served the notice on each interested party.

(2) A person may move the Court without previously filing or serving notice of the motion—

- (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant;
- (b) where each party interested, other than the applicant, consents to the order;

- (c) where under the rules or the practice of the Court for the time being the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion; or
- (d) where the Court dispenses with the requirements of subrule (1).

(3) Notice of a motion shall—

- (a) state the date and time when, and the place where, the motion is to be made;
- (b) where the Court has made an order under rule 3, bear a note of the order made;
- (c) state concisely the nature of the order which is sought;
- (d) state concisely the grounds on which the order is sought, or refer to the affidavit in which those grounds are contained; and
- (e) name each party to be affected by the order which is sought.

(4) The grounds of a notice of motion, and any supporting facts or circumstances on which the applicant intends to rely, shall be verified in an affidavit or affidavits filed in the proceedings.

Time for service of notice

3. Where notice of a motion is required to be served, it shall, unless the Court otherwise orders, be served not less than 7 days before the date fixed for the hearing of the motion.

Affidavits

4. A party who intends at the hearing of any motion to rely on any affidavit shall file the affidavit and serve a copy on each other interested party (except a party on whom service of notice of the motion is dispensed with in accordance with the rules) in sufficient time before the hearing to enable that other party to reply on affidavit, or within such period as the Court may order.

Hearing

5. (1) The Court upon the hearing or adjourned hearing of any motion may make or refuse the order sought and may make such other order or give such directions as may be just.

(2) A motion in relation to any proceedings shall include, so far as is practicable, all or as many applications as the applicant to the motion may desire to make in relation to the proceedings and as, having regard to the

nature of the proceedings, can conveniently be dealt with at the one time, and upon the hearing or adjourned hearing of the motion any respondent to the motion shall be at liberty to make any application in relation to the proceedings.

(3) Where a respondent to a motion makes any application as mentioned in subrule (2) the Court may either grant or refuse the order sought by that respondent, and give such directions as may be just, or may adjourn the hearing of the application and direct any necessary notice to be given.

(4) Where the Court grants or refuses any order upon the hearing or adjourned hearing of a motion, it may do so on terms.

Costs

6. (1) The Court may if it thinks fit order any party to pay to another party the costs, or any specified part of the costs, of any application to which this Part applies, or may order that those costs be reserved to the hearing of the proceedings.

(2) No costs shall be allowed of any application made ex parte except by order of the Court.

(3) Where costs are ordered by the Court under this rule to be paid they shall not be taxed until the proceedings are determined, unless the Court otherwise orders.

(4) Where the Court orders the early taxation of any costs referred to in this rule, it shall direct the scale on which the costs are to be taxed.

(5) This rule applies whether or not costs are claimed in the notice of motion.

(6) This rule applies except where otherwise provided in section 18 of the Act.

PART 15—AMENDMENT

General

1. (1) The Court may, at any stage of any proceedings, on the application of any party or without any such application, order, on terms, that any document in the proceedings be amended, or that any party have leave to amend any document filed by him in the proceedings, in either case in such manner as the Court thinks fit.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, or of correcting any defect or error in any proceedings, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, subrule (1) applies to the person intended to be made a party as if he were a party.

(4) This rule does not apply to the amendment of an award, order or certificate.

Amendment of document without leave

2. A party may, without leave, amend any document filed by him at any time before a certificate of readiness is filed in the proceedings.

Amendment after certificate of readiness

3. (1) Where a party applies, or several parties by consent apply, for an order amending, or giving leave to amend, a document after a certificate of readiness has been filed in the proceedings, the party or parties shall in the application advise the Court as to whether, and if so to what extent, the amendment if made will affect the readiness of the proceedings for hearing.

(2) When making or refusing an order referred to in subrule (1), the Court may give directions as to the listing of the proceedings for call-over, mention, pre-trial conference or hearing.

Mode of amendment—directions

4. (1) Where the Court orders, or gives leave for, the making of an amendment, it may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment, and may make any such order or leave conditional on compliance with any such directions.

(2) Rules 5, 6 and 7 have effect subject to subrule (1).

Mode of amendment—simple amendments

5. (1) Where the amendments authorised under this Part to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the document difficult or inconvenient to read, the amendments may be made by writing the alterations in the document.

(2) A filed document amended under this rule shall be marked with a statement specifying the date of the amendment and—

- (a) where the amendment is made pursuant to an order, the date of the order; or
- (b) where the amendment is made by a party without leave, a reference to the rule authorising the amendment.

(3) The marking mentioned in subrule (2) shall—

- (a) where the amendment is made pursuant to an order, be carried out by the registrar and sealed with the seal of the Court; or
- (b) where the amendment is made by a party without leave, be carried out by the party and initialled by him.

Mode of amendment—fresh document

6. Subject to rule 5(1), amendments authorised under this Part to a filed document shall be made by filing a fresh document, amended as so authorised, and bearing a statement specifying the matters mentioned in rule 5(2).

Service after amendment

7. Where a document has been served and is afterwards amended, the party who filed the document shall, on the day on which the amendment is made, or so soon thereafter as is practicable, serve on the parties on whom the document was served—

- (a) if the amendment is made under rule 5—a notice specifying the amendment and the matters mentioned in rule 5(2); or
- (b) if the amendment is made under rule 6—the fresh document.

Award order or certificate

8. (1) Where there is a clerical mistake, or an error arising from an accidental slip or omission, in an award or order, or in a certificate, the Court, on the application of a party or without any such application, may, at any time, correct the mistake or error.

(2) Rules 5, 6 and 7 do not apply to a correction made under subrule (1).

Costs

9. (1) Where a party amends a document under this Part, with or without leave, he shall, unless the Court otherwise orders, pay the costs of any other party of and occasioned by the amendment.

(2) This rule applies except where otherwise provided in section 18 of the Act.

PART 16—WITHDRAWAL AND DISCONTINUANCE

Discontinuance

1. (1) A party may discontinue proceedings so far as concerns the whole or any part of any claim made by him—

- (a) if no listing date has been allocated to the proceedings—without leave of the Court or consent of any other party; or
- (b) after a listing date has been allocated to the proceedings—with the consent of all other parties or by leave of the Court.

(2) Application for the leave of the Court as mentioned in subrule (1) (b) may be made—

- (a) if made on not less than 3 days' notice to all other parties at a time when the proceedings are before the Court for another purpose—orally; or
- (b) if made otherwise—by motion under Part 14.

Withdrawal

2. (1) A party raising any matter in an answer may withdraw that matter at any time.

(2) Subrule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party.

Terms of leave

3. The Court may give leave under rule 1 or rule 2 on terms.

Want of prosecution

4. (1) Where an applicant does not within a reasonable time take any step necessary to bring any proceedings to a hearing, or unreasonably takes any step to avoid the proceedings being brought to a hearing, the Court may, on the application of the respondent, order on terms that the proceedings be dismissed or make such other order as the Court thinks fit.

(2) Where proceedings are dismissed under subrule (1), rules 7, 8 and 9 apply as though the dismissal were a discontinuance.

Mode of discontinuance or withdrawal

5. (1) A discontinuance or withdrawal under rule 1 or rule 2 shall be made by filing a notice stating the extent of the discontinuance or withdrawal.

(2) Where the discontinuance or withdrawal is by consent the consent shall be endorsed by each consenting party on the notice before filing.

Service

6. A party filing a notice under rule 5 shall, on the day of filing or as soon as practicable thereafter, serve the notice on each other party.

Costs

7. (1) Where a party to any proceedings discontinues the proceedings as to the whole or any part thereof, the Court may, if it thinks fit, on the application of another party against whom the discontinued claim was brought and who does not consent to the discontinuance, order the party to pay the costs of the other party.

(2) The costs payable to a party by virtue of an order under subrule (1) shall be the costs of the party occasioned by the discontinued claim and reasonably incurred before service on the party of notice of the discontinuance.

(3) This rule applies except where otherwise provided in section 18 of the Act.

Effect of discontinuance

8. A discontinuance under this Part as to any claim for compensation shall not be a defence to proceedings on the same, or substantially the same, claim for compensation.

Stay to secure costs

9. Where—

- (a) a party discontinues proceedings so far as concerns the whole or any part thereof;
- (b) he is, by virtue of any order under rule 7 (1), liable to pay the costs of another party occasioned by the proceedings; and

- (c) before payment of the costs, he brings against that other party further proceedings on the same or substantially the same claim for compensation as that on which the discontinued proceedings were brought. the Court may stay the further proceedings until those costs are paid.

Proceedings stood over generally

10. (1) Where proceedings are stood over generally on terms allowing a party to restore the proceedings for hearing, and the proceedings are not so restored within 6 months after they are so stood over, the proceedings shall, unless the Court otherwise orders, be deemed to have been discontinued by the applicant on the last day of that period of 6 months.

(2) Where proceedings are deemed to have been discontinued under subrule (1), the Court shall as soon as convenient give notice in writing of the deemed discontinuance to all parties.

PART 17—THIRD PARTY PROCEDURE

Third party notice

1. (1) Where a respondent in any proceedings claims as against any person (in this Part called the third party) that the respondent is entitled to—

- (a) contribution towards or indemnity for any compensation he is ordered in the proceedings to pay to or on behalf of the applicant; or
- (b) any other relief or remedy relating to to or connected with the subject of the proceedings,

the respondent may, not later than the filing of his answer in the proceedings, or, where no answer is filed, within 28 days after service of the originating process in the proceedings, file a third party notice.

(2) A third party notice shall contain such particulars of the respondent's claim against the third party as the originating process would be required to contain if the respondent had separately claimed against the third party in respect of that claim.

(3) A respondent shall when filing a third party notice lodge with the registrar as many copies of the notice as there are parties already in the proceedings.

(4) The registrar shall, as soon as practicable after any copies are lodged with him under subrule (3)—

- (a) seal the copies;
- (b) give or send by post one of the copies to the applicant or his solicitor; and
- (c) return the others of the copies to the respondent.

Stay of proceedings

2. (1) Where a respondent who has filed an answer in any proceedings files a third party notice, the proceedings shall be stayed until the third party files an answer to the respondent's claim against him, or until the expiration of 28 days after service on the third party of the third party notice, whichever first occurs.

(2) Where proceedings are stayed under subrule (1) and the third party notice is not served on the third party, or an affidavit of that service is not filed, within a reasonable time, the Court may, on the application of the applicant in the proceedings, remove the stay.

Service

3. (1) A respondent who files a third party notice shall as soon as practicable thereafter serve, or cause to be served, the third party notice on the third party and on every other party to the proceedings other than the applicant, and, where the third party was not a party to the proceedings before the service of the third party notice, shall also serve on the third party a copy of the originating process and every answer filed in the proceedings before the filing of the third party notice.

(2) A respondent who has served, or caused to be served, a third party notice on the third party shall as soon as practicable thereafter file an affidavit of that service and inform each party to the proceedings, other than that respondent and the third party, in writing, of the date of that service.

Rights and liabilities of third party

4. (1) A third party shall, as from the time of service upon him of a third party notice, be a party to the proceedings in which the notice was filed, and, subject to the rules, he shall have the same rights, and be subject to the same liabilities, in respect of the proceedings as he would have had and been subject to if the respondent has separately claimed against him in respect of the claim the subject of the proceedings.

(2) Without limiting the generality of subrule (1), the third party shall be subject to the provisions of Part 11 as to the filing of an appearance or an answer in the proceedings, and he shall include in any answer filed by

him any grounds on which he disputes the applicant's claim against the respondent as well as any grounds on which he disputes the respondent's claim against the third party.

Hearing

5. (1) The Court may direct what part the third party shall take in the hearing of the proceedings and generally the extent to which the usual procedures at a hearing shall be modified because of the joinder of the third party.

(2) As between the respondent by whom the third party notice has been given and the third party, the Court may grant to either of them any relief or remedy which might properly have been granted if the claim against the third party had been made in separate proceedings, and may give such decision for either of them against the other as may be just.

(3) A respondent shall not, except by leave of the Court (which leave may be granted on terms), enforce any decision given in his favour against a third party until any decision given in favour of the applicant against the respondent in the same proceedings has been satisfied.

Separate hearings

6. The Court may, if the hearing in the one proceedings of the issues between the applicant and the respondent and the issues between the respondent and the third party would in its opinion embarrass or delay the hearing of the proceedings or be otherwise inconvenient, order separate hearings or make such other order as it thinks fit.

Fourth and subsequent parties

7. (1) Where a third party makes against any person such a claim as is mentioned in rule 1 (1) the third party may join the person as a fourth party in the proceedings, and subsequent parties may be joined in succession in the like circumstances, each by the party previous to him in order of joinder.

(2) The provisions of this Part apply to parties joined subsequently to the third party as though in each group of 3 parties successively joined the first of those parties were an applicant, the second a respondent, and the third a third party.

Co-respondents

8. A person may be joined as a third party under this Part in any proceedings notwithstanding that he is already one of the respondents in the proceedings.

Costs

9. (1) Where a third party has been joined in any proceedings the Court—

- (a) may order any party to pay the costs incurred by any other party;
- (b) may order any party to pay any costs which would otherwise be payable by any other party;
- (c) may make such other order as to costs as the justice of the case may require; and
- (d) may, and shall whenever necessary, direct the scale on which any costs in the proceedings are to be taxed.

(2) Costs in any proceedings in which a third party has been joined shall, subject to any order or direction of the Court under subrule (1)—

- (a) be taxed on the scale appropriate to any amount separately recovered or unsuccessfully claimed between a party and another party joined by that party, and, where there is no such amount, the amount recovered or unsuccessfully claimed by the applicant against the respondent; and
- (b) be recoverable by a party against another party only to the extent of the issues between those parties, and not to the extent of any costs payable by the first mentioned party.

(3) This rule applies except where otherwise provided in section 18 of the Act.

PART 18—DISCOVERY AND INSPECTION OF DOCUMENTS**Division 1—Discovery****Order for general discovery**

1. The court may, at any stage of any proceedings, order any party to file and serve on any other party—

- (a) a list in accordance with rule 2 of documents relating to any matter in question in the proceedings; or
- (b) a list as mentioned in paragraph (a), verified by affidavit.

Contents of list

2. (1) A list of documents required by or under this Part shall, unless the Court otherwise orders, conform to the requirements of this rule.

(2) A list of documents shall enumerate the documents which are or have been in the possession, custody or power of the party making the list.

(3) A list of documents shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

(4) Where a party making a list of documents claims that any document in his possession, custody or power is privileged from production, he shall, in the list, sufficiently state the grounds of the privilege.

(5) A list of documents shall distinguish those documents which are in the possession, custody or power of the party making the list from those that have been but are not in his possession, custody or power.

(6) A list of documents shall, as to any document which has been but is not then in the possession, custody or power of the party making the list, state when he parted with the document and what has become of it.

(7) A list of documents shall appoint a time within 7 days after service of the list when, and a place where, the documents in the list which are in the possession, custody or power of the party making the list, and as to which the party makes no claim of privilege, may be inspected.

(8) Where a party making a list of documents has a solicitor in the proceedings, the solicitor shall certify on the list that, according to his instructions, the list and the statements in the list are correct.

Order for particular discovery

3. Where, at any stage of any proceedings, it appears to the Court, from evidence or from the nature or circumstances of the case or from any document filed in the proceedings, that there are grounds for belief that some document or class of documents relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the Court may order that party—

- (a) to file an affidavit stating whether that document or any document of that class is or has been in his possession, custody or power and, if it has been but is not then in his possession, custody or power, when he parted with it and what has become of it; and

(b) to serve the affidavit on any other party.

Deponent

4. (1) Subject to subrule (2), an affidavit verifying a list of documents of a party or an affidavit to be filed by a party pursuant to an order under rule 3 may be made as follows:

- (a) by the party;
- (b) where the party is a corporation, by an officer of the corporation;
- (c) where the party is the Crown or an officer of the Crown suing or sued in his official capacity, by an officer of the Crown;
- (d) where the party is a Government employer within the meaning of the Compensation Act, other than the Crown, by an officer of that employer.

(2) Where the party is a person to whom subrule (1) (b), (c) or (d) applies, and the affidavit is to be filed and served pursuant to an order, the Court may—

- (a) specify by name or otherwise the person to make the affidavit; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom subrule (1) (b) (c) or (d) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

Absence of privilege

5. (1) Except with the leave of the Court, a party to any proceedings may not claim to be excused from production of any document on the ground that it relates solely to and does not tend to impeach his own case and does not relate to or tend to support the case of any opposing party.

(2) Leave under subrule (1) shall not be granted except for special cause.

(3) Any application to the Court for leave under subrule (1) may be made without serving notice of the motion.

Division 2—Inspection**Document referred to in document filed**

6. (1) Where an originating process, answer, third or subsequent party notice, or affidavit filed by a party refers to a document, any other party

may, by notice to produce served on him, require him to produce the document for inspection.

(2) Where a notice to produce a document is served on a party under subrule (1), he shall, within 14 days after that service, serve on the party requiring production a notice—

- (a) appointing a time within 7 days after service of the notice under this subrule when, and a place where, the document may be inspected;
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in his possession, custody or power and stating to the best of his knowledge information and belief where the document is and in whose possession, custody or power it is.

Order for production

7. (1) Where—

- (a) it appears from a list of documents filed by a party under this Part that any document is in his possession, custody or power;
- (b) an originating process, answer, third or subsequent party notice, or affidavit filed by a party refers to any document; or
- (c) it appears to the Court, from evidence or from the nature or circumstances of the case or from any document filed in the proceedings, that there are grounds for a belief that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party, the Court may, unless the document is privileged from production, order the party—
- (d) to produce the document for inspection by any other party at a time and place specified in the order; or
- (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

(2) An affidavit made pursuant to an order under subrule (1) (e) shall, unless the Court otherwise orders, state whether there are in the document copied, and if so what, erasures, interlineations or alterations.

Power to take copies

8. A party to whom a document is produced for inspection under this Part may take copies of the document.

Production to the Court

9. (1) The Court may, at any stage of any proceedings, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the proceedings.

(2) Upon production of a document to the Court pursuant to an order under subrule (1), the Court may deal with the document in such manner as it thinks fit.

Inspection to decide objection

10. Where an application is made for an order under rule 7 for the production of any document for inspection by another party or for an order under rule 9 for the production of any document to the Court, and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

Division 3—General**Order only if necessary**

11. The Court shall not make an order under this Part for the filing or service of any list of documents or affidavit or other document or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

Default

12. (1) Where a party makes default in filing or serving a list of documents or affidavit or other document or in producing any document as required under this Part, the Court may make such order as it thinks fit, including—

- (a) an order that the party in default pay the costs of any other party occasioned by the default;
- (b) if the party in default is the applicant, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (c) if the party in default is a respondent, an order that his answer be struck out and that default judgment be given against him.

(2) This rule applies except where otherwise provided in section 18 of the Act.

Public interest

13. This Part does not affect any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

PART 19—INTERROGATORIES**Order to answer**

1. (1) The Court may, at any stage of any proceedings, order any party to file and serve on any other party (whether the interrogating party or not)—

- (a) a statement in accordance with rule 2 in answer to interrogatories specified or referred to in the order relating to any matter in question in the proceedings; or
- (b) a statement as mentioned in paragraph (a) verified by affidavit.

(2) The Court shall not make an order under subrule (1) unless satisfied that the order is necessary at the time when the order is made.

Contents of statement

2. (1) A statement in answer to interrogatories required by or under this Part shall, unless the Court otherwise orders, conform to the requirements of this rule.

(2) A statement in answer to interrogatories shall deal with each interrogatory specifically either—

- (a) by answering the substance of the interrogatory without evasion; or
- (b) by objecting to answer the interrogatory on one or more of the grounds mentioned in subrule (3) and briefly stating the facts on which the objection is based.

(3) Subject to subrule (4), a party may object to answer any interrogatory on the following grounds but no other—

- (a) that the interrogatory does not relate to any matter in question between him and the party requiring the answer;
- (b) that the interrogatory is vexatious or oppressive; and
- (c) privilege.

(4) On an objection under subrule (2) (b) to answer an interrogatory, the Court may—

- (a) order that an answer to that interrogatory shall not be required;

- (b) limit the extent to which an answer to that interrogatory shall be required; or
- (c) require the objecting party to specify on what grounds he objects to answer that interrogatory and determine the sufficiency of the objection.

(5) Where the Court determines under subrule (4) (c) that an objection to answer an interrogatory is not sufficient the objecting party shall not be entitled to object to answer that interrogatory.

Deponent

3. (1) Subject to subrule (2), an affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

- (a) by the party;
- (b) where the party is a corporation, by an officer of the corporation;
- (c) where the party is the Crown or an officer of the Crown suing or sued in his official capacity, by an officer of the Crown;
- (d) where the party is a Government employer within the meaning of the Compensation Act, other than the Crown, by an officer of that employer.

(2) Where the party is a person to whom subrule (1) (b), (c) or (d) applies, and the affidavit is to be filed and served pursuant to an order, the Court may—

- (a) specify by name or otherwise the person to make the affidavit; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom subrule (1) (b), (c) or (d) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

Insufficient answer

4. (1) Where a party fails to answer an interrogatory sufficiently, the Court may—

- (a) if he has made an insufficient answer, order him to make a further answer verified by affidavit in accordance with rule 3; or
- (b) order him or any of the persons mentioned in rule 3 (1) (b), (c) or (d), as the nature of the case requires, to attend to be orally examined.

(2) Subrule (1) does not limit the powers of the Court under rule 5.

Default

5. Where a party makes default in compliance with an order under rule 1 or rule 4 to file or serve a statement or affidavit, the Court may make such order as it thinks fit, including—

- (a) if the party in default is an applicant, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (b) if the party in default is a respondent, an order that any answer filed by him be struck out and that default judgment be given against him.

Answers as evidence

6. (1) A party may tender as evidence—

- (a) one or more answers to interrogatories without tendering the others;
- (b) part of an answer to an interrogatory without tendering the whole of the answer.

(2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may—

- (a) look at the whole of the answers; and
- (b) if it appears to the Court that any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

Public interest

7. This Part does not affect any rule of law which authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

**PART 20—MEDICAL EXAMINATIONS, INSPECTION OF
PROPERTY ETC.****Division 1—Medical Examinations****Application and interpretation**

1. (1) This Division applies to a medical examination required, ordered or conducted for the purposes of proceedings in the Court.

(2) In this Division—

“**medical examination**” includes any examination by a medical expert, but does not include tests mentioned in Division 2;

“**medical expert**” includes medical practitioner and dentist;

“**worker**” means a worker as defined in the Compensation Act in respect of whom proceedings are commenced.

Notice of examination

2. (1) Subject to this rule, any party or insurer of a party may serve on a worker a notice for the medical examination of the worker.

(2) A notice for medical examination shall be a reasonable request by the party giving the notice that the worker submit to examination by a specified medical expert at a specified time and place.

(3) Except by leave of the Court, which may be given on terms, or consent of the worker, a notice shall not be given under subrule (1) requesting that a worker submit to examination—

(a) by a medical expert specialising in a particular field of practice if the worker has already been examined, at the request of the party giving the notice, by another medical expert specialising in that field; or

(b) by the one medical expert—

(i) more than twice in respect of the one proceedings; or

(ii) at intervals of less than 2 months.

(4) An examination to which the worker submits himself for the purposes of section 129 of the Compensation Act is not an examination by a medical expert for the purposes of subrule (3).

Expenses

3. (1) A party who serves a notice for medical examination, or on whose application the Court makes an order under rule 5 for medical examination, of a worker shall, on request by the worker, pay to the worker a reasonable sum to meet the travelling and other expenses of the worker of and incidental to the medical examination, including any wages lost by the worker.

(2) Where a worker claims that he has not been paid a reasonable sum as required by subrule (1), he may so advise the registrar, who may, if he thinks fit, report the matter to the Court.

(3) Where the registrar reports a matter to the Court under subrule (2), subject to any order of the Court the worker remains liable to comply with the notice or order for his medical examination, but the Court may direct a party to pay such sum as the Court thinks fit in discharge of the party's obligation under subrule (1).

Non-compliance with notice

4. Where a notice for medical examination of a worker is served pursuant to rule 2, the worker does not submit to examination in accordance with the notice, and the Court is of opinion that there was no reasonable excuse for his not so submitting, the Court may, on terms, stay proceedings as to any claim for compensation made in the Court in respect of the worker.

Order for examination

5. (1) The Court may, on terms, make orders for the medical examination of a worker in respect of whom a claim for compensation is made in the Court, including an order that the worker submit to examination by a specified medical expert at a specified time and place.

(2) Where the Court orders that a worker submit to examination by a medical expert, the worker shall do all things reasonably requested, and answer all questions reasonably asked, of him by the medical expert for the purposes of the examination.

Division 2—Rehabilitation assessment

Application and interpretation

6. (1) This Division applies to proceedings in which the extent of impairment of the earning capacity of a worker due to an injury or injuries to that worker is relevant to any matter in question.

(2) In this Division, each of “**treatment by way of rehabilitation**” and “**approved place**” has the meaning which it has for the purposes of section 59 of the Compensation Act.

Order for rehabilitation tests

7. (1) The Court may, on terms, make orders for such testing of the worker as to the Court may seem proper for the purpose of assisting the Court to assess the extent of impairment of the worker's capacity,

including an order to submit to tests, pursuant to the direction of a medical practitioner, during a specified period and at a specified place, being—

- (a) a rehabilitation centre conducted by a hospital; or
- (b) an approved place, at which treatment by way of rehabilitation is afforded.

(2) Where the Court makes an order under subrule (1) that a worker submit to tests, the worker shall do all things reasonably requested and answer all questions reasonably asked by the medical practitioner or any person conducting a test for the purposes of the test.

(3) The terms upon which the Court may make orders under subrule (1) include terms for the payment by the party obtaining the order to the applicant in the proceedings of any expense or loss incurred in complying with the order.

Division 3—Inspection of property etc.

Inspection of property etc.

8. (1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceedings, make orders, on terms, for—

- (a) the inspection of any property;
- (b) the taking of samples of any property;
- (c) the making of any observation of any property;
- (d) the trying of any experiment on or with any property; or
- (e) the observation of any process.

(2) An order under subrule (1) may authorise any person to enter any land or to do any other thing for the purpose of getting access to the property.

(3) A party applying for an order under this rule shall, so far as practicable, serve notice of the motion on each person who would be affected by the order if made.

(4) In this rule, “**property**” includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

View

9. The Court may inspect any place, process or thing with respect to which any question arises in any proceedings.

Division 4—Default**Default**

10. (1) Where a party (whether or not the party is a worker) makes default in compliance with an order under this Part, or in compliance with rule 5 (2) or 7 (2), and the Court is of opinion that there was no reasonable excuse for the default, the Court may make such order as it thinks fit, including—

- (a) an order that the party in default pay the costs of any other party occasioned by the default;
- (b) if the party in default is an applicant, an order that the proceedings be stayed or dismissed as to the whole or any part thereof; or
- (c) if the party in default is a respondent, an order that any answer filed by him be struck out and that default judgment be given against him.

(2) This rule does not limit any power of the Court to punish for contempt.

PART 21—EVIDENCE BY DEPOSITION**Order for examination of witness**

1. The Court may, for the purpose of any proceedings, on terms, make an order allowing the evidence of any witness (whether a party to the proceedings or not) to be taken, prior to the hearing of the proceedings, on examination under this part in New South Wales or elsewhere before—

- (a) any Judge or commissioner, sitting in Court, in chambers or elsewhere;
- (b) any registrar;
- (c) a notary public;
- (d) a justice of the peace;
- (e) a practising barrister or solicitor; or
- (f) such other person as the Court, in the special circumstances of the case, may think fit to appoint, specified in the order as examiner.

Evidence admissible

2. The evidence of a witness taken under rule 1 shall be admissible, subject to all just exceptions, at the hearing of the proceedings unless it is

proved that the witness is, at the time of the hearing, within a convenient distance of the place at which the proceedings are being heard and able to attend.

Expenses

3. A witness attending before an examiner to be examined, or to produce a document, as allowed by an order under rule 1 shall be entitled to payment of the like amount for conduct money, expenses and loss of time as he would have been entitled to upon his attending to give evidence or to produce a document at the hearing of the proceedings before the Court.

Documents for examiner

4. (1) The party obtaining an order under rule 1 shall furnish the examiner specified in the order with copies of such of the documents in the proceedings as are necessary to inform the examiner of the questions to which the examination is to relate.

(2) Where the documents in the proceedings are not sufficient to inform the examiner of the questions to which the examination is to relate, the Court shall, in the order under rule 1 or in a later order, state those questions.

Appointment for examination

5. (1) Subject to any order of the Court, the examiner shall appoint a place and time for the examination.

(2) The time appointed shall, having regard to the convenience of the witness to be examined, and to the circumstances, be as soon as practicable after the making of the order.

(3) The examiner shall give reasonable notice of an appointment under this rule to the party obtaining the order, and that party shall give reasonable notice of the appointment to each other party.

Conduct of examination

6. (1) The examiner shall permit each party, his counsel and solicitor, and any other person in respect of whom leave of the Court is granted under Part 11 rule 1 (1), to attend the examination.

(2) A witness examined before an examiner may, unless the Court otherwise orders, be cross-examined and re-examined.

(3) The examination, cross-examination and re-examination of a witness before an examiner shall, unless the Court otherwise orders, be conducted in like manner as at a hearing before the Court.

(4) The examiner may put any question to a witness examined before him as to—

- (a) the meaning of any answer made by the witness; or
- (b) any matter arising in the course of the examination.

(5) The examiner may adjourn the examination from time to time and from place to place.

Examination of additional persons

7. The examiner may, with the consent in writing of each party to the proceedings, take the examination of any other witness in addition to the witness named or provided for in the order under rule 1, and if he does so he shall annex to the deposition of that other witness the consent of each of the parties.

Objection

8. Where objection is taken to a question put to a witness being examined before an examiner, or a witness being so examined takes objection to answering a question put to him or to produce any document or thing—

- (a) the examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for the objection;
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) shall be set out in the deposition of the witness or in a statement attached to the deposition;
- (c) the Court shall, at the hearing of the proceedings or on application by any party, decide the validity of the ground for the objection; and
- (d) if the Court decides against the objector, the Court may order him to pay any costs occasioned by the objection.

Taking of depositions

9. (1) The deposition of a witness examined before an examiner shall be taken down by the examiner or a shorthand writer or some other person, or recorded by sound-recording process, in the presence of the examiner, and, where taken down in shorthand or recorded by sound-recording process, shall be transcribed in typescript, printing or longhand.

(2) The deposition shall contain as nearly as may be the statement of the witness examined.

(3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.

(4) Subject to subrules (2) and (3) and to rule 8 (b), the deposition need not set out every question and answer.

Authentication and filing

10. (1) If any party requests, the deposition of a witness (or the shorthand notes of his examination) shall be read to the witness, or the sound record of his examination shall be played back in the hearing of the witness.

(2) The examiner shall authenticate the deposition by his signature.

(3) The examiner shall make on, or attach to, the deposition a note signed by him of the time occupied in the examination and the fees received by (or payable to) him in respect of the examination.

(4) The examiner shall send the deposition to the registrar and the registrar shall file it in the proceedings.

(5) The examiner shall, unless the Court otherwise orders, send to the registrar any exhibits which were before the examiner, and the registrar shall deal with the exhibits in such manner as the Court may direct.

Special report

11. (1) The examiner may make to the Court a special report with regard to an examination before him and with regard to the absence of any person from, or the conduct of any person at, the examination.

(2) The Court may direct such proceedings to be taken, or make such order, on the report as the Court thinks fit.

Perpetuation of testimony

12. (1) Witnesses shall not be examined to perpetuate testimony unless proceedings have been commenced for the purpose.

(2) Any person may commence proceedings to perpetuate testimony which may be material for establishing any right or claim to any relief which the Court might grant, and which right or claim cannot be established before the happening of a future event.

(3) Where proceedings to perpetuate testimony touch any matter or thing in which the Workcover Authority may have an interest, that Authority shall be made a respondent to those proceedings.

PART 22—HEARING

Time and place of hearing

1. (1) Where a date for the hearing of any proceedings has been fixed under Part 12, the hearing of the proceedings may be held on that or any later date.

(2) Notwithstanding subrule (1) and notwithstanding the fixing of a date for the hearing of any proceedings under Part 12, the Court may make such order as it thinks fit for fixing the time and place of hearing.

Proceedings called on for hearing

2. (1) Subject to the rules, where proceedings are called on for hearing—

- (a) if the applicant and a respondent appear, the Court may proceed to hear and dispose of the proceedings as against that respondent; or
- (b) if the applicant does, but a respondent does not, appear, the Court may proceed to the hearing of the proceedings against that respondent on the part of the applicant, and may make an award

(2) Where the Court proceeds to the hearing of any proceedings on the part of the applicant, as referred to in subrule (1) (b), its decision in the proceedings—

- (a) may, on sufficient cause being shown, be set aside by order of the Court on terms; and
- (b) shall, if not set aside, be as final and conclusive between the parties to the proceedings as if all parties had appeared.

Striking out of proceedings

3. (1) The Court may, if it thinks fit, strike out at proceedings at any time on terms, and without affecting the generality of the foregoing provisions of this subrule, the Court may so strike out any proceedings if—

- (a) no party appears; or
- (b) a respondent does, but the applicant does not, appear.

(2) Where proceedings are struck out under subrule (1), the Court may, on the application of any party, order that the proceedings be reinstated on terms, and without affecting the generality of the foregoing provisions

of this subrule, the proceedings may be reinstated upon such terms and conditions as to costs, the staying of the proceedings until payment of costs, and the priority of the hearing of the proceedings as the Court thinks fit.

(3) Subrule (2) applies except where otherwise provided in section 18 of the Act.

Conduct of the hearing

4. (1) For the purposes of this rule—

- (a) where the burden of proof on any issue lies on the applicant, he shall be the beginning party and the respondent shall be the opposite party; and
- (b) where the burden of proof on all the issues lies on the respondent, he shall be the beginning party and the applicant shall be the opposite party.

(2) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the hearing of any proceedings.

(3) Subject to subrule (2)—

- (a) where the only parties to any proceedings are one applicant and one respondent, the order of evidence and addresses shall be as provided by subrules (4) to (7); and
- (b) in any other case, the order of evidence and addresses shall be as provided in subrules (4) to (7), subject to such modifications as the nature of the case may require.

(4) The beginning party may make an address opening his case and may then adduce his evidence.

(5) Where, at the conclusion of the evidence for the beginning party, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.

(6) If, pursuant to subrule (5), the opposite party elects not to adduce evidence, the beginning party may make an address closing his case and then the opposite party may make an address stating his case.

(7) If, pursuant to subrule (5), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his evidence, and after adducing his evidence he may make an address closing his case, and thereupon the beginning party may make an address closing his case.

PART 23—EVIDENCE: GENERAL**Interpretation****1.** In this Part—

“issue at a hearing” means an issue of fact at a hearing arising on any claim for relief in the proceedings, and includes a question of fact at the hearing of an application for default judgment under Part 10 rule 1 (1);

“hearing” means a hearing in any proceedings other than proceedings to which Division 2 or 3 of Part 5 applies, and includes the hearing of an application for default judgment under Part 10 rule 1 (1).

Witness at a hearing

2. (1) Subject to subrule (2), the evidence of any witness on any issue at a hearing shall be given orally before the Court.

(2) Subrule (1) applies subject to the Act, the Compensation Act, the rules, any provision for the time being made by or under any other Act, and any agreement between the parties.

Witness on other occasions

3. (1) Subject to rule 2, the evidence in chief of any witness may, unless the Court otherwise orders, be given by affidavit.

(2) Where, under subrule (1), the evidence in chief of a witness may be given by affidavit, his evidence in chief shall not, unless the Court otherwise orders, be given orally.

Evidence by affidavit

4. (1) The Court may, on terms, order in any proceedings that evidence of particular facts may be given by affidavit.

(2) Where the only matters in question in any proceedings are a claim for interest under section 19 of the Act and costs, evidence of facts relating to the matter of interest may, unless the Court otherwise orders, be given by affidavit.

Hearsay and copies

5. (1) This rule does not apply to evidence on an issue at a hearing.

(2) Subject to subrule (1), subrules (3) and (4) apply where undue delay or hardship would otherwise be caused.

(3) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of the information, the statement shall not be inadmissible on the ground that it is hearsay.

(4) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the document shall not be inadmissible as evidence of the contents of the original on the ground that the original is not produced.

Earlier evidence in the proceedings

6. (1) Subject to subrule (2), evidence taken in the proceedings may be used subsequently in the proceedings.

(2) Subrule (1) does not enable the use, as evidence on any issue at a hearing, of evidence taken before the hearing, but—

- (a) evidence at a hearing may be used on the hearing of an application for default judgment under Part 10 rule 1 (1) in the same proceedings; and
- (b) evidence taken in proceedings may, with the leave of the Court, be used as evidence on any issue at a hearing in the proceedings in relation to the proof of particular facts.

Depositions

7. (1) Subject to this Part, a deposition taken in any proceedings is not admissible in evidence in the proceedings unless taken pursuant to Part 21.

(2) Subject to subrule (3), a deposition taken in any proceedings (other than a deposition taken pursuant to Part 21) is not admissible in evidence on any issue at a hearing in the proceedings unless—

- (a) the party against whom the deposition is tendered consents to the admission; or
- (b) the deponent is dead or cannot be compelled or is unable through sickness or other infirmity to attend the hearing.

(3) The Court may admit a deposition in evidence on any issue at a hearing in relation to the proof of particular facts.

(4) Except as evidence on any issue at a hearing, a deposition taken in any proceedings is admissible in the proceedings, but the Court may direct that the deposition be not admissible unless the party tendering it produces the deponent for cross-examination.

(5) Evidence that a case falls within subrule (2) (b) may, unless the Court otherwise orders, be given by affidavit on information and belief, but the person making the affidavit must give the source and ground of the information.

Report by expert

8. (1) Subject to subrule (2), this rule applies in respect of any proceedings subject to—

- (a) any order made by the Court at any time;
- (b) any order made by the registrar at any call-over or mention of the proceedings under Part 12; and
- (c) any agreement between the parties.

(2) In this rule, “**expert witness**” includes a medical expert, as defined in Part 20 rule 1 (2), who is called to give evidence in, or prepares a report in respect of, the proceedings.

(3) A written report made by an expert witness shall be admissible in evidence on any issue at a hearing as to—

- (a) any matter of the expert opinion of the maker of the report contained in it; and
- (b) any fact stated in it which is known to the maker as a result either of his own observations or of his general professional knowledge and experience, if the party tendering the report, at least 28 days before the hearing, serves the report on each other party, or, where another party is a respondent who has not filed an answer in the proceedings, the insurer for that party.

(4) Except where otherwise provided in the Compensation Act, a party may require the attendance for cross-examination of a person making a report mentioned in subrule (3).

(5) A requirement under subrule (4) shall be made, within a reasonable time, to the party tendering the report.

(6) Where the attendance of a person is required under subrule (4), his report shall not be tendered under section 14B or section 14CE of the Evidence Act 1898 or otherwise used unless the person attends or is dead or the Court grants leave to use the report.

(7) Where a person making a report is cross-examined, the party tendering the report may re-examine him.

Evidence in other proceedings

9. (1) A party may, with the leave of the court, but saving all just exceptions, read evidence taken, or an affidavit filed, in other proceedings.

(2) Subrule (1) does not allow evidence taken, or an affidavit filed, in other proceedings to be read as evidence on any issue at a hearing, except in relation to the proof of particular facts.

Plans, photographs and models

10. (1) Where a party intends to tender any plan, photograph or model at a hearing, he shall, not later than 7 days before the commencement of the hearing, give the other parties an opportunity to inspect it and to agree to its admission without proof.

(2) Non-compliance with subrule (1) shall not affect the admissibility of a plan, photograph or model.

Proof of Court documents

11. (1) A document purporting to be marked with the seal of the Court is admissible in evidence without further proof.

(2) An office copy of a document filed in or issued out of the Court is admissible in evidence in all proceedings and between all parties to the same extent as the original document would be admissible.

(3) A document purporting to be marked with the seal of the Court and to be a copy of a document filed in or issued out of the Court is admissible as an office copy of the latter document without further proof.

Production of Court documents

12. Where, for the purpose of any proceedings, a person, by request in writing, requires a registrar to produce to the Court any document in the custody of that registrar, that registrar shall, unless the Court otherwise orders, produce the document in accordance with the request.

Attendance and production

13. (1) The court may make orders for—

- (a) the attendance of any person for the purpose of being examined;
- or

(b) the attendance of any person and production by him of any document or thing specified or described in the order.

(2) An order under subrule (1) may be made for the attendance of any person before, and production by him to, the Court or any registrar, examiner, arbitrator, or other person authorised to take evidence, on any hearing or other occasion.

(3) Subrules (1) and (2) apply whether or not the person for whose attendance the order is made has been required to attend by subpoena.

Leading questions to witness

14. Where a person is examined in relation to an investigation, inspection or report made by him in the course of carrying out public or official duties, the party calling the person may, unless the Court otherwise directs, examine person by asking him leading questions.

Privilege

15. (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel the production of that document or thing except production to the Court for the purpose of ruling on the objection.

(2) Where a question is put to a person in the course of examination, and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the Court shall not compel an answer to the question.

(3) Subrule (1) applies where an order is made for production to, and subrule (2) applies where a question is put to a person in the course of examination before, the Court or any registrar, examiner, arbitrator, or other person authorised to receive evidence whether on a hearing or on any other occasion.

(4) This rule does not affect any rule of law which authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.

(5) This rule does not apply to an objection to produce any document or thing or to answer any question on the ground mentioned in subrule (4).

Production on notice

16. Where a party to any proceedings serves on another party notice requiring the party served to produce at any hearing in the proceedings, or before any registrar, examiner, arbitrator or other person authorised to receive evidence in the proceedings, any document or thing for the purpose of evidence, and the document or thing is in the possession, custody or power of the party served, the party served shall, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for any subpoena for production.

PART 24—SUBPOENAS**Interpretation**

1. In this Part—

“**medical expert**” has the meaning it has for the purposes of Part 20;

“**person named**” means, in relation to a subpoena, the person to whom the subpoena is addressed.

Conduct money

2. (1) A subpoena shall not require the person named to attend or to produce any document or thing on any day on which his attendance is required unless an amount sufficient to meet the reasonable expenses of the person named of complying with the subpoena in relation to that day is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that day.

(2) An amount is not sufficient for the purpose of subrule (1) if it is less than the amount which would be payable in respect of the person named if the party issuing the subpoena were entitled to claim witness’ expenses in respect of that person as costs in the proceedings, including for travelling and other expenses—

- (a) for the distance necessary to be travelled by the person named in attending the Court—
 - (i) if not exceeding 80 kilometres—80 cents per kilometre one way after the first kilometre; or
 - (ii) if exceeding 80 kilometres—the reasonable cost of travel; and
- (b) for sustenance and accommodation, where necessarily incurred, such amount as having regard to all the circumstances is reasonable.

Production by non-party

3. (1) Where the person named in a subpoena for production of any document or thing, being a subpoena requiring attendance before the Court at a place at which there is a registrar, is not a party to the proceedings, the subpoena shall, unless the Court otherwise orders, permit the person to produce the document or thing to the registrar, not later than the day before the day on which the person is required by the subpoena to attend, instead of attending and producing the document or thing to the Court.

(2) Where a document or thing is produced to a registrar pursuant to subrule (1), the registrar shall—

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the Court may direct.

(3) Where a document or thing is produced to a registrar pursuant to subrule (1), and before the document or thing is tendered to the Court the hearing of the proceedings is adjourned generally, the subpoena shall no longer be of any force or effect, and the registrar shall be at liberty to return the document or thing to the person who produced it to him.

(4) Where a document or thing is produced to a registrar pursuant to subrule (1) in compliance with a subpoena which is returnable on a day mentioned in rule 6 (5) (b), (c), (d) or (e), the registrar may, if he thinks fit, at a reasonable time order that the subpoena shall no longer be of any force or effect and return the document or thing to the person who produced it to him.

(5) Subrules (3) and (4) do not operate to prevent the issue of a further subpoena requiring the production of a document or thing returned by a registrar under either of those subrules.

(6) This rule does not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

Banker's books

4. (1) Where, in any proceedings, the person named in a subpoena is an officer of a bank, and the bank is not a party to the proceedings, and the subpoena requires the officer to produce any banker's book the contents of which can be proved under Part IV of the Evidence Act 1898, the subpoena shall, unless the Court for special cause otherwise orders, permit the officer to produce proof of the relevant entries in the banker's book in accordance with that Part, instead of producing the banker's book.

(2) In subrule (1) each of the expressions “officer of a bank”, “bank” and “banker’s book” has the meaning which it has in Part IV of the Evidence Act 1898.

(3) A registrar who is required to issue a subpoena shall not be concerned to inquire whether subrule (1) applies to the subpoena, but the Court may set aside as irregular a subpoena which does not comply with subrule (1).

Return of exhibits

5. (1) Exhibits in any proceedings, whether produced on subpoena or otherwise, may be returned to the person who produced them to the Court or registrar if the Court so orders.

(2) A person to whom exhibits may be returned under subrule (1) shall obtain the return of, and give to the registrar a receipt for, the exhibits as soon as practicable, and the registrar shall be responsible for the safe custody of any exhibits in his keeping for a period only of 14 days after the first day on which the exhibits may be so returned.

Issue

6. (1) On request by a party, a registrar shall issue a subpoena to give evidence or a subpoena for production or a subpoena both to give evidence and for production.

(2) Subrule (1) does not prevent the issue of a subpoena to give evidence and a subpoena for production to the same person in the same proceedings.

(3) Subject to subrule (4), a party requesting the issue of a subpoena shall produce the subpoena to the registrar in duplicate.

(4) Where a party requests in any proceedings the issue of several subpoenas to give evidence in similar terms but addressed to different persons, he need produce only one original, but that original must contain the name of each person to whom any of the subpoenas is addressed.

(5) A party may require a subpoena for production of documents to be returnable on—

- (a) the day fixed for the hearing of the proceedings or any day not more than 21 days before that day;
- (b) the day fixed for the hearing of any application ancillary to the proceedings, or any day not more than 21 days before that day;
- (c) the day fixed for any pre-hearing conference in the proceedings, or any day not more than 21 days before that day;

- (d) the day fixed for any call-over of the proceedings; or
- (e) with the leave of the Court or registrar, any other day.
- (6) A party or his solicitor or barrister may—
 - (a) inspect documents produced in compliance with a subpoena; and
 - (b) take copies of any documents so inspected, if the Court or the registrar so orders, and any such order may be made on terms.

Mode of service

7. (1) Part 8 applies to service of a subpoena.

(2) In addition to any mode of service prescribed or permitted by virtue of subrule (1), service of a subpoena on a medical expert may be effected at a place where the expert's practice is carried on, by handing a copy of the subpoena to some person apparently engaged (whether as a servant or otherwise) in the practice and apparently of or above the age of 16 years.

Time for service

8. (1) A subpoena shall be served within a reasonable time.

(2) Without limiting subrule (1), where the person named in a subpoena is not a party to the proceedings the subpoena shall, unless the Court or the registrar otherwise orders, be served at least 7 days, or, where the person named is a medical expert who is to give evidence as such an expert, 14 days, before the day on which it is returnable.

(3) Without limiting subrule (1) or (2), where a subpoena requires a medical expert to attend in Sydney on a specified date for the purposes of giving evidence on medical matters, the subpoena may not be served on the expert later than 21 days before the date so specified unless the Court or the registrar otherwise orders.

(4) An order under subrule (2) or (3) may be made on terms, and those terms may include a requirement for the payment of money to the person named in the subpoena.

(5) The parties may not by consent abridge any time fixed by or under subrule (2) or (3).

Production by medical expert

9. (1) A party may require the issue of a subpoena for production in the approved form requiring a medical expert to attend and produce medical records or clear sharp photocopies of them.

(2) A subpoena requested under subrule (1) shall not require the person named to attend or produce any document on any date specified unless the amount of \$25 is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that specified date.

(3) Rule 2 shall not apply to a subpoena requested under subrule (1).

(4) Rule 3 shall apply to the photocopies as it applies to the records.

Setting aside

10. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part.

(2) Notice of a motion under subrule (1) shall be filed and served on the party on whose request the subpoena was issued.

PART 25—AFFIDAVITS

Time for swearing

1. An affidavit for use in any proceedings may be sworn before or after the commencement of the proceedings.

Form

2. (1) An affidavit shall be made in the first person.

(2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, the person shall certify in or before the jurat that—

- (a) the affidavit was read in his presence to the deponent; and
- (b) the deponent seemed to understand the affidavit.

(4) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (3) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that he seemed to understand it.

(5) Each page of an affidavit shall be signed by the deponent and by the person before whom it is sworn.

Alterations

3. (1) Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit—

- (a) the affidavit may nevertheless be filed, unless the Court or registrar otherwise orders; but
- (b) the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, rewrites in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

(2) Subrule (1) applies to a document verified by affidavit as if the document were part of the affidavit.

Annexures and exhibits

4. (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

(3) An exhibit to an affidavit shall be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

Irregularity

5. (1) An affidavit may, unless the court or registrar otherwise orders, be filed notwithstanding any irregularity in form.

(2) An affidavit may, with the leave of the Court, be used notwithstanding any irregularity in form.

Filing

6. An affidavit may not be used without leave of the Court unless it has been filed.

Service

7. The Court may give directions concerning the service of affidavits.

Scandal, etc.

8. Where there is scandalous, irrelevant or otherwise oppressive matter in an affidavit, the Court or registrar may order that—

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

Cross-examination

9. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under subrule (1) shall be made to the party filing or proposing to use the affidavit.

(3) Where the attendance of a person is required under subrule (1) and he does not attend, his affidavit shall not be used without the leave of the court.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine him.

Affidavits of service

10. An affidavit of service shall contain—

- (a) a statement as to when, where, how and by whom service was effected;
- (b) a statement, using as nearly as practicable the actual words used by the person to whom the process was delivered, as to what, if anything, that person said, on the occasion of service, concerning the service or the subject matter of the proceedings; and
- (c) a statement that the deponent is over the age of 16 years, or is of a named class of persons who by virtue of their status, occupation or otherwise must be over that age.

PART 26—AWARDS, ORDERS AND ENFORCEMENT**General relief**

1. The Court may, at any stage of any proceedings, on the application of any party, give such decision or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that decision or order in any originating process.

Written opinion

2. Where the Court gives any decision or makes any order and the opinion of the Court is reduced to writing, it shall be sufficient to state orally the opinion without stating the reasons for the opinion, but the

written opinion shall be then given by delivering it to a specified officer of the Court or to the Chief Court Reporter for delivery to the parties.

Judicial notice of order

3. (1) In any proceedings, the Court may take judicial notice of any order of the Court.

(2) In any proceedings, the Court may be informed of an order of the Court by (amongst other things) reference to a note made by, or by the direction of, the Judge or registrar making the order.

Settling of award

4. (1) Where the Court gives a decision or makes a final order disposing of any proceedings, the registrar shall as soon as convenient prepare and settle a form of award engrossing the decision or order.

(2) The registrar shall—

- (a) before 9.30 a.m. on any day, cause to be listed on the notice board in the registry notice of any proceedings in which he proposes to settle the form of award that day;
- (b) permit any party to any proceedings to be present when he settles the form of award in the proceedings; and
- (c) sign and seal any form of award settled by him, and as soon as practicable cause a copy to be forwarded to each party, and any insurer of a respondent, to the proceedings.

Application for certificate

5. (1) A person requiring the issue of a certificate under section 23 (1) of the Act of an award or order shall make application for the certificate by swearing and filing an affidavit containing and verifying a statement of—

- (a) the date of the award or order;
- (b) the amount of money originally payable under the award or order;
- (c) the amount of costs originally payable under the award or order, if that amount has been fixed by taxation of the costs or otherwise;
- (d) the total amount, if any, paid by the debtor under the award or order in reduction of the amount payable;
- (e) the total amount of any credits accrued in reduction of the amount payable otherwise than by payment;

- (f) the amount or amounts on which, and the date or dates from which, the person claims to be entitled to interest in respect of the amount payable;
 - (g) such other particulars, if any, as are necessary to calculate the balance payable under the award or order;
 - (h) the amount payable under the award or order on the date of swearing of the affidavit; and
 - (i) the address of the place of residence or business of the debtor under the award or order.
- (2) An affidavit mentioned in subrule (1) shall not be filed if it is sworn more than 14 days before the day on which it is submitted for filing.

PART 27—RECONSIDERATION AND APPEALS FROM THE COURT

Reconsideration without application

1. The Court may of its own motion, on giving such notice to the parties as is reasonable in all the circumstances of the case, under section 17 (4) of the Act reconsider any matter which has been dealt with by it and rescind, alter or amend any decision previously made or given by the court.

Application for reconsideration

2. (1) An application for the exercise by the Court of any of its powers under section 17 (4) of the Act shall be made by motion under Part 14.

(2) An application mentioned in subrule (1) shall be made as soon as practicable after the person making the application becomes aware of any ground on which it is made, and before the person, if he is a party to the proceedings, takes any fresh step in the proceedings after becoming so aware.

(3) An application mentioned in subrule (1) shall be supported by an affidavit or affidavits containing and verifying a statement as to—

- (a) with regard to the decision, order, award or other matter the subject of the application—
 - (i) when, where, by whom, in what proceedings and between what parties it was made or dealt with;
 - (ii) its terms;

- (iii) to what extent, and when and in what manner, it has been carried into effect; and
 - (iv) in what respects it is sought to be rescinded, altered amended or reconsidered;
 - (b) the terms of any decision, order, award or other matter sought to be substituted;
 - (c) the grounds on which the application is made;
 - (d) full particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence alleged as a ground for the application;
 - (e) when, where, from whom and in what manner the facts, matters or things in respect of each ground relied on first became known to the person making the application;
 - (f) any steps taken in the proceedings by the person making the application after a fact, matter or thing mentioned in paragraph (e) became known to him, and the respective dates upon which any such steps were taken; and
 - (g) whether any stay of proceedings is sought and in respect of what matters and to what extent.
- (4) An application mentioned in subrule (1) shall be made returnable for the first available day convenient to the Court.

Stay of proceedings re reconsideration

3. (1) On the giving of notice by the Court under rule 1, or on the making of an application under rule 2, the Court may, if it thinks fit, and with or without any application for a stay of proceedings, order, on terms, that the proceedings be stayed, and to what extent.

(2) Subject to any order under subrule (1), neither the giving of notice by the Court under rule 1 nor the making of an application under rule 2 shall operate as a stay of proceedings.

(3) For the purposes of this rule, “**stay of proceedings**” includes deferment of the payment out in due course of any moneys paid into the Court in favour of any person.

Time for request for stated case

4. Subject to rule 5 (1) (a), the time prescribed for the purpose of section 33 (1) of the Act is a period of 28 days after the date of any determination the subject of the request for the case to be stated.

Manner of requesting stated case

- 5. (1)** A request mentioned in section 33 (1) of the Act may be made—
- (a) if made in the presence of all parties at the time the question the subject of the request arises or is determined—orally; or
 - (b) if made otherwise—by filing a request in writing and lodging with it a copy for each other party to the proceedings.
- (2)** The registrar shall forthwith seal each copy lodged under subrule (1) (b) and transmit one such copy to each party to the proceedings other than the applicant for the stated case.
- (3)** A request for a case to be stated, whether made orally or in writing, shall set out the question or questions upon which the decision of the Supreme Court is sought, and shall state when and how the question or questions arose in the proceedings.
- (4)** The submissions of the parties on a request for a case to be stated may be made—
- (a) where the request is made orally—when the request is made; or
 - (b) where the request is made otherwise—at a listing of the proceedings for mention by arrangement with the registrar.

Procedure for settling case requested

- 6.** Where the Court orders, pursuant to a request, that a case be stated—
- (a) the requesting party shall—
 - (i) within 14 days confer with the other parties in an endeavour to agree upon the terms of the case to be stated;
 - (ii) prepare a draft case, as far as possible in terms agreed on, containing—
 - (a) the ultimate facts proved or admitted in the proceedings;
 - (b) distinct findings of fact in relation to the actual occurrences and circumstances upon which the Court based its conclusions or inferences, and distinct statements of those inferences; and
 - (c) the question or questions of law emerging from those findings of fact and inferences upon which the decision of the Supreme Court is sought; and
 - (iii) file the draft case and serve a copy on each other party;

- (b) each other party shall, within 7 days after service on him of the draft case, notify the requesting party in writing of any objections he makes, or amendments he desires, to the draft case, and file a copy of that notice; and
- (c) unless the Court otherwise orders, the registrar shall, within one months after the order for the case to be stated, list the proceedings before the Court for decision as to the form in which the case shall be stated and for the settlement of the case.

Filing of case in Supreme Court

7. (1) Within 7 days after being notified by the registrar that a case requested by him has been signed by the Judge, the requesting party shall file the case in the Supreme Court in accordance with the rules and practice of that Court.

(2) Where the court is of opinion that there has been undue delay on the part of the requesting party in the preparation of the draft case or the filing of the stated case in the Supreme Court, the Court may revoke its order that the case be stated.

Decision on appeal

8. Upon any decision being given by the Supreme Court or the High Court in respect of an appeal from, or case stated by, the Court, the registrar shall obtain and file a copy of the decision and reasons therefore, and, where appropriate, shall list the proceedings for directions.

PART 28—INVESTMENT

Payment to Public Trustee

1. The Court may direct the registrar—
 - (a) to pay money paid into the Court to the Public Trustee for the purpose of payment into the Public Trustee's common fund; and
 - (b) to demand from the Public Trustee repayment in accordance with the order of the Court of any moneys so paid and any interest payable by the Public Trustee on those moneys, together with a statement of that interest.

PART 29—COSTS**Division 1—Application****General**

1. (1) This Part, other than rules 2 and 3, applies to work done by solicitors or counsel on or after the day on which these rules commence.

(2) This part applies except where otherwise provided in section 18 of the Act.

Work done by solicitors before rules commence

2. In respect of work done by solicitors before the day on which these rules commence, costs in any proceedings shall be taxed or otherwise determined as though the Workers' Compensation Rules continued to apply to the proceedings.

Work done by counsel before rules commence

3. In respect of work done by counsel before the day on which these rules commence, fees to counsel in any proceedings shall be taxed or otherwise determined as though the Workers' Compensation Rules continued to apply to the proceedings.

Division 2—General**Interpretation**

4. (1) In this Part, a reference to costs is a reference to costs payable between party and party in respect of proceedings, including disbursements.

(2) In this part,

“**taxing officer**” means a registrar or a person appointed by the Chief Judge to be a taxing officer, and in relation to any proceedings means the taxing officer before whom costs in the proceedings are to be taxed or to whom any matter in respect of the proceedings is referred.

Amount recovered

5. (1) Subject to this rule, in this Part “the amount recovered” in any proceedings means the aggregate of all sums of money recovered under all heads of claim in the proceedings, other than any sum recovered under

a head of claim to which no ground of denial (whether whole or partial) of liability was raised, by any answer filed in the proceedings, additional to any grounds raised to a head of claim under which a larger sum was recovered.

(2) For the purposes of this Part—

- (a) where the court makes a general order for payment of expenses under section 60 of the Compensation Act and does not specify the amount of those expenses, the amount recovered under the order shall be deemed to be \$1,000;
- (b) where compensation is recovered by way of a weekly payment during incapacity (whether or not any liability in respect of that payment is then commuted under section 51 of the Compensation Act), the amount recovered shall be deemed to be the total of the weekly payments awarded, calculated for—
 - (i) the period of liability up to and including the first day fixed for the hearing of the proceedings; and
 - (ii) any period during which the proceedings stood adjourned at the request of the employer or insurer,

together with, where any lump sum is awarded, that lump sum.

- (c) where on a review under section 55 of the Compensation Act of a weekly payment—
 - (i) the weekly payment is ordered to be increased, the amount recovered shall be deemed to be the total of the increase ordered, calculated for—
 - (a) the period commencing on the day from which the increase is ordered and concluding on the first day fixed for the hearing of the applicant for review; and
 - (b) any period during which the application for review stood adjourned at the request of the employer or insurer,

together with, where any lump sum is awarded, that lump sum;

- (ii) the employer or insurer claims that the weekly payment should be ended or that the amount or period of the payment should be reduced, and the payment is not ordered to be ended or reduced in amount or period, the amount recovered shall be deemed to be the total of the weekly payment calculated for—

(a) the period commencing on the day on which the application for review was filed and concluding on the first day fixed for the hearing of that application; and

(b) any period during which the application for review stood adjourned at the request of the employer or insurer,

together with, where any lump sum is awarded, that lump sum; or

(iii) the employer or insurer claims that the amount or period of the weekly payment should be reduced, and the amount or period is ordered to be reduced but not to the extent claimed by the employer or insurer, and costs are awarded to the worker, the amount recovered shall be deemed to be the total of the weekly payment (or of the weekly payment as reduced by the order) calculated for—

(a) the period commencing on the day on which the application for review was filed and concluding on the first day fixed for the hearing of that application (or that period as reduced by the order); and

(b) any period during which the application for review stood adjourned at the request of the employer or insurer,

together with, where any lump sum is awarded, that lump sum;

(d) where an award is made in any proceedings (including any application for review of a weekly payment) before a date for the hearing of the proceedings is fixed, the date of the award shall for the purposes of paragraphs (b) and (c) be deemed to be the first day fixed for the hearing of the proceedings; and

(e) where any proceedings (including any application for review of a weekly payment) is listed for call-over for the purpose of fixing a date for hearing at a country sittings of the Court, and a date is not fixed, the first date of the country sittings shall for the purposes of paragraphs (b) and (c) be deemed to be the first day fixed for the hearing of the proceedings.

(3) Where in any proceedings costs are ordered to be paid by a worker, the amount recovered shall for the purposes of this Part be deemed to be—

(a) where the worker claimed an amount for compensation in the proceedings—that amount; or

- (b) in any other case, the amount which would have been, or would have been deemed to be, the amount recovered in the proceedings if costs had been ordered in favour of the worker.

Solicitor authorised to receive costs

6. Where a party to whom costs are payable acts by a solicitor, the solicitor is hereby authorised to receive any moneys paid to the Court or payable by a party on account of those costs.

Division 3—Entitlement to costs

Worker's costs

7. Where in any proceedings the Court makes a final order, or gives a final decision, in favour of the worker, the worker shall, unless the Court otherwise orders, be entitled to recover his costs of the proceedings against the employer against whom the final order or decision was made or given.

Commutation cases

8. (1) Where an employer commences proceedings under section 51 of the Compensation Act with the consent of the worker, the employer shall, unless the Court otherwise orders, pay the costs of the worker of the proceedings whatever be the result of the proceedings.

(2) For the purposes of subrule (1), unless the Court otherwise orders, the costs of the worker—

- (a) shall include the costs of instructions, of negotiations between the employer's and the worker's solicitors and counsel, of obtaining necessary reports by medical or other experts, of obtaining necessary advice from and of conference with counsel, and of the preparation of all material necessary to be placed before the Court on the hearing, notwithstanding that any such costs may have been incurred before the proceedings were commenced; and
- (b) shall not include counsel's fees other than the brief fee relevant to the proceedings, and the fee for one conference appropriate to that brief fee, as set out in the Schedule of counsel's fees Annexure "A" to these rules.

(3) Where in any proceedings other than proceedings commenced under section 51 of the Compensation Act an award is made for the commutation of the liability in respect of a weekly payment in whole or in part by the payment of a lump sum, the worker's costs of the

proceedings shall include the costs and disbursements of obtaining reports by medical or other experts necessary for consideration by the Court with regard to the commutation.

Costs where other proceedings

9. Where in any proceedings a worker is entitled to recover costs against an employer or insurer, those costs shall not be reduced or apportioned because any part of them was incurred also in respect of proceedings under the Uninsured Liability and Indemnity Scheme, or in respect of proceedings against another person against whom no award has been made, except to the extent that any such part has been received by the worker.

Division 4—Ascertainment of costs

Taxed costs and other provisions

10. (1) Subject to this Part, where, by or under the Act or the rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to his costs taxed in accordance with this Part.

(2) Where costs are to be paid to any person, the Court may order that, as to the whole or any part (specified in the order) of the costs, instead of his costs taxed in accordance with this Part, that person shall be entitled to—

- (a) his costs taxed on a scale other than the scale which would be otherwise applicable;
- (b) a proportion specified in the order of the taxed costs;
- (c) the costs taxed in compliance with any direction of the Court as to the allowance or disallowance of any item or the amount to be allowed in respect of any item;
- (d) the taxed costs from or up to a stage of the proceedings specified in the order;
- (e) a gross amount specified in the order; or
- (f) an amount in respect of costs to be ascertained in such manner as the Court may direct.

(3) Where a person to whom costs are payable has reasonably incurred costs for which provision is not made by this Part, reasonable costs may be allowed (whether by decision of the taxing officer on taxation or by any order under subrule (2)) having regard to any provision made for costs of a like nature.

Agreement as to costs

11. (1) Where costs are payable by one party to another, those parties may agree as to the amount of the costs.

(2) An amount of costs agreed to under subrule (1) shall not be included in any certificate issued under section 23 (1) of the Act unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

Agreement as to part of costs

12. (1) Notwithstanding anything in this Part, where costs are payable by one party to another, the parties may agree as to the amount of those costs payable in respect of any item or items of work done.

(2) An amount of costs agreed to under subrule (1) shall not be included in any certificate issued under section 23 (1) of the Act unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

(3) Where parties have agreed under subrule (1) as to the amount of costs payable in respect of any item or items of work done in any proceedings and a party is entitled to recover costs in the proceedings in respect of any other item or items, that party may tax the costs of the other item or items, and a reference in this Part to taxation of costs shall be taken to be a reference to the taxation of the costs of the other item or items.

Taxation of costs

13. (1) Where costs in respect of any proceedings are to be taxed, they shall be taxed by a taxing officer.

(2) Subject to any order or direction made or given by the Court, costs for taxation shall be taxed upon the scales in or annexed to these rules, and in compliance with the provisions of this Part.

Taxation—counsel's fees

14. (1) Fees properly paid to counsel shall, on a taxation of his client's costs, be allowed in accordance with the requirements of the Schedule of counsel's fees Annexure "A" to these rules, on proof to the satisfaction of the taxing officer of payment.

(2) Where the Schedule of counsel's fees provides more than one head of claim under which counsel's fee for brief on hearing in any proceedings might properly be determined, that fee shall be determined under such of those heads as produces the highest fee, and as though the entire amount recovered or deemed to be recovered in the proceedings were recovered under that head of claim.

Taxation—solicitors' costs

15. (1) In this rule—

“first scale” means the scale of fees for solicitors set out in the Schedule of solicitors' costs Annexure “B” to these rules, and the disbursements prescribed in that scale;

“second scale” means a scale of fees for solicitors comprising the fees in the first scale increased by 50 per centum thereof and the disbursements prescribed in the first scale.

(2) Solicitors' costs for taxation in respect of any proceedings shall be taxed—

- (a) in a death claim where liability is admitted subject only to proof of marriage, dependency or other similar issue—upon the first scale;
- (b) in a death claim other than a claim mentioned in paragraph (a)—
 - (i) where the amount recovered does not exceed \$14,500—upon the second scale; or
 - (ii) where the amount recovered exceeds \$14,500—as nearly as practicable upon the highest scale for the time being applicable to actions in the Supreme Court in its Common Law Division;
- (c) in proceedings at the time of commencement of which weekly payments at the appropriate rate were being paid, if those payments continued on a regular basis up to the time when an award was made—unless the Court otherwise orders, upon the first scale.
- (d) in a claim other than a death claim, and other than proceedings mentioned in paragraph (c), where the amount recovered—
 - (i) does not exceed \$6,000, or, in the case of an award by which a weekly payment continues beyond the date of the award, does not exceed \$3,000—upon the first scale; or
 - (ii) exceeds \$6,000, or, in the case of an award by which a weekly payment continues beyond the date of the award, exceeds \$3,000—upon the second scale;

- (e) in proceedings for suspension of a weekly payment—upon the first scale; or
- (f) in an application for a declaration of liability—upon the first scale.

Taxation—witnesses' expenses

16. (1) Subject to this rule, there may be allowed on a taxation of costs in respect of any proceedings amounts paid to witnesses for their attendance at the Court or other assistance in the hearing of the proceedings.

(2) Subject to this rule, the amount allowable in respect of any witness shall be the amount that would have been allowable in the District Court in respect of such a witness had the proceedings been an action in the District Court heard on the day or days on which the proceedings were heard in the Court.

(3) The amount allowable in respect of a witness—

- (a) who gave evidence shall be allowed on taxation unless the Court otherwise orders; or
- (b) who did not give evidence may be allowed on taxation if the taxing officer thinks fit,

whether or not the witness was subpoenaed.

(4) Where a witness necessarily remains in the vicinity of the Court for the purpose of giving evidence in any proceedings, there may be allowed on taxation such amount in respect of compensation paid to the witness for waiting time as the Court may order, or, in the absence of any order by the Court, as the taxing officer may think fit.

(5) Where a witness necessarily, through himself or his employee, spends substantial time or incurs expense in locating, collating or copying documents or other records so as to enable him to give evidence or produce documents for the purpose of any proceedings, there may be allowed on taxation such amount in respect of the time or expense of the witness as the Court may order, or, in the absence of any order by the Court, as the taxing officer may think fit.

(6) The Court may order that a qualifying fee be allowed in respect of anything done by an expert witness in qualifying to give evidence, or may order that any such qualifying fee be disallowed, and where in respect of an expert witness the Court orders that a qualifying fee be allowed there shall be allowed on taxation such amount paid to the witness for so qualifying as the taxing officer thinks fit.

(7) The Court may order that the expenses of preparing and proving plans, drawings, models, photographs or the like for the purposes of the proceedings be allowed or disallowed, and where in respect of any such expenses—

- (a) the Court orders that the expenses be allowed; or
- (b) the Court makes no order and the taxing officer thinks fit to allow the expenses,

there shall be allowed on taxation such amount paid in respect of the expenses as the taxing officer thinks fit.

General powers of a taxing officer

17. A taxing officer may, in the discharge of his functions with respect to the taxation of costs or any other functions under this Part—

- (a) if he is satisfied that service of a copy of a bill of costs or notice of an appointment given under rule 20 cannot be effected within a reasonable time dispense with that service;
- (b) enlarge or shorten the time for service of a copy of a bill of costs or notice of an appointment;
- (c) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (d) proceed to a taxation in the absence of any party who does not appear at the time appointed for the taxation;
- (e) take evidence by the examination of witnesses or otherwise;
- (f) direct the production of any document;
- (g) generally control any proceedings before him;
- (h) strike out or adjourn any proceedings before him; and
- (i) do such other things as the Court may by order direct.

Costs of taxation

18. (1) Costs taxed under a decision or order of the Court shall, unless the decision or order otherwise provides, include the reasonable costs of the taxation.

(2) Subject to subrule (1) and subject to any order of the Court, a taxing officer may make orders as to the costs of or incidental to any taxation before him.

(3) Where a taxing officer makes an order under subrule (2) allowing costs—

- (a) to a party whose bill of costs is before the taxing officer for taxation, he shall direct that the bill be amended to include the costs so allowed; or
- (b) to a party whose bill of costs is not, but against whom a bill of costs is, before the taxing officer for taxation, he shall direct that the amount of the bill so before him be reduced by the amount of the costs so allowed.

Where decision subject to appeal etc.

19. Costs to be taxed under a decision or order may, unless the Court otherwise orders, or unless proceedings in respect of the decision or order are stayed, be taxed notwithstanding that the decision or order is liable to be reviewed or to be set aside, varied or discharged on appeal or otherwise.

Notice of taxation

20. (1) A party whose costs in respect of any proceedings are to be taxed shall file a bill of those costs, and may obtain from the registrar in duplicate a notice of an appointment stating the day and hour at which the taxation is to commence.

(2) A party whose costs are to be taxed shall serve, in accordance with subrule (3)—

- (a) a notice of the appointment for the taxation obtained under subrule (1); and
- (b) where a copy of the bill filed under subrule (1) has not previously been served as required by this rule, a copy of the bill, which need not be sealed with the seal of the Court,

on any party liable to pay the costs.

(3) Service for the purposes of subrule (2) shall be effected—

- (a) in accordance with Part 8, not less than 15 days before the day appointed for the taxation; or
- (b) by sending the documents to be served by post addressed to the party to be served at his address last known to the party serving, so as to reach that address in the ordinary course of post not less than 15 days before the day appointed for the taxation.

(4) Notwithstanding rule 17 (d), but subject to rule 17 (a) and (b), a taxing officer shall not proceed with the taxation of any costs in the absence of any party liable to pay the costs unless satisfied that this rule has been complied with.

Bill of costs

21. (1) A bill of costs shall contain, in respect of all the costs which the party filing the bill is then entitled to tax in the proceedings—

- (a) a detailed statement of the work done by the solicitor, his servants and agents, and, separately from that statement, a detailed statement of the disbursements made;
- (b) the date on which each item of work was done;
- (c) the number of the item in the Schedule to these rules on which it is intended to rely in claiming each item of costs;
- (d) the date on which each disbursement was made; and
- (e) the costs claimed for each item of work done or disbursement made.

(2) Where it is a clerk who did any work included in a bill of costs and that fact is relevant to the amount of costs allowable for the work, a statement of that fact shall be included in the bill.

(3) Where a liability to make a disbursement has been incurred or a fee to counsel has been incurred and the disbursement or fee would be properly included in a bill of costs if paid, the disbursement or fee may be included in the bill notwithstanding that it has not been paid.

(4) Where a bill includes charges for work done by a lawyer practising in a place outside New South Wales—

- (a) the charges shall be shown as a disbursement; and
- (b) so far as practicable, each charge shall, if allowed, be allowed in an amount appropriate to the place where the lawyer practises.

(5) A taxing officer may, if he thinks fit, proceed with the taxation of a bill of costs notwithstanding that the bill does not comply with this rule.

(6) The Court or the taxing officer may give leave, on terms, for the amendment of a bill of costs.

Taxation—attendance of parties

22. (1) The taxing officer may—

- (a) arrange and direct what parties should attend before him on any taxation; and
- (b) disallow the costs of attendance of any person whose attendance he considers unnecessary.

(2) Notwithstanding subrule (1), any party to a taxation, and, with the leave of the taxing officer, any party to the proceedings not a party to the taxation, may attend the taxation.

Taxation—notice of adjournment

23. Where the taxing officer adjourns a taxation he may order any party attending before him to give notice of the adjournment to any absent party.

Taxation—what costs allowed

24. On a taxation of costs in any proceedings there shall be allowed all such costs as were, in the opinion of the taxing officer, necessary or proper for the attainment of justice in the proceedings or for enforcing or defending in the proceedings the rights of the party whose costs are being taxed, and there shall be disallowed all such costs as were, in the opinion of the taxing officer, incurred through over-caution, negligence, or mistake, or merely at the desire of the party incurring them.

Taxation—report and reference

25. (1) The taxing officer may report specially to the Court the result of any taxation before him, whether as to the whole of the costs to be taxed or as to any item, together with such circumstances in reference thereto as the taxing officer thinks proper to report.

(2) The taxing officer may, of his own motion, refer any question arising in a taxation for the direction of the Court, and the Court may, after hearing any party or not as the Court thinks fit, give its direction on the question, which shall be binding on the taxing officer, or decline to give any direction.

Review of taxation

26. (1) The Court may, on application by a party under Part 14, review a taxation as to the whole or any part thereof.

(2) Notice of motion for a review of a taxation shall be filed within 14 days after the completion of the taxation.

(3) On the review, unless the Court otherwise orders—

- (a) further evidence shall not be received; and
- (b) a party shall not raise any ground of objection not raised before the taxing officer.

(4) Subject to subrule (3), on the review the Court may—

- (a) exercise all the powers and discretions of the taxing officer in relation to the subject matter of the review;

- (b) make orders for the allowance or disallowance of any item or as to its quantum;
- (c) make orders for the remission of any item to the taxing officer for taxation in accordance with the directions of the Court; and
- (d) make such other orders as the nature of the case requires.

Default of party entitled

27. (1) Where a party entitled to tax his costs does not, within a reasonable time after service on him of a request in writing by a party liable to pay the costs, file and serve a bill of the costs and serve notice of an appointment for the taxation of the costs as required by rule 20, the registrar may fix a time within which the party entitled must file and serve the bill and serve the notice.

(2) Where a party entitled to tax his costs fails to file and serve a bill and serve a notice of appointment within a time fixed by the registrar under subrule (1), the registrar may certify the failure and may disallow the costs of the party entitled or allow them at such amount as he thinks fit.

(3) Where a party entitled to tax his costs defaults by failing to proceed with the taxation, the taxing officer may, for the purpose of preventing any other party being adversely affected by the default, certify the default and—

- (a) disallow the costs of the defaulting party or allow them at such amount as he thinks fit; and
- (b) make such order under rule 18 (2) as he thinks fit as to the costs of any other party.

PART 30—COMMISSIONERS**Where commissioner may exercise functions**

1. Subject to the rules, where a commissioner is authorised to exercise a function he may exercise that function—

- (a) in Court; or
- (b) in chambers,

in such circumstances and on such terms as the commissioner thinks fit.

Mandatory order and removal

2. (1) The Chief Judge may by order direct a commissioner to do or refrain from doing, in any proceedings, any act relating to the functions which the commissioner is authorised to exercise.

(2) Subject to any direction by the Chief Judge, an application for an order under subrule (1) shall be made by notice of motion under Part 14, and the commissioner concerned shall be, for the purposes of Part 14 rule 2 (1), an interested party.

(3) The Chief Judge, before the conclusion of any proceedings before a commissioner, may, on application by a party or of his own motion, order that the proceedings be removed into the Court constituted by a Judge, and upon such removal the Court may—

- (a) hear and determine the question or matter in respect of which the proceedings were before the commissioner; or
- (b) hear and determine any question or matter in the proceedings and remit the proceedings to the commissioner with such directions as the Court thinks fit.

Application for review

3. (1) In this rule, “review” means review under section 36 of the Act.

(2) An application for review of a decision of a commissioner may be made orally to the commissioner immediately after he gives the decision.

(3) Subject to subrule (2), an application for review of a decision of a commissioner shall be made by notice of motion under Part 14.

(4) An application for review of a decision of a commissioner shall be made within 28 days after the decision is given.

Report on review or reference

4. (1) Where a decision of a commissioner is the subject of an application for review under section 36 of the Act, the commissioner shall prepare and furnish to the Court a report as to all findings of fact made, and inferences drawn, by him leading to the decision, and any other matter which in his opinion is likely to be of assistance to the Court in determining the review.

(2) Where a commissioner refers to the Court a question or matter arising in proceedings before him, he shall prepare and furnish to the Court a report as to all findings of fact made, and inferences drawn, by him relevant to the question or matter, and as to any other matter which in his opinion is likely to be of assistance to the Court in determining the reference.

(3) The Court may if it thinks fit request a commissioner who has furnished a report under subrule (1) or (2) to prepare and furnish a further report as to any matter which the Court thinks is likely to be of assistance

to it with regard to the review or reference, and the commissioner shall comply with any such request.

(4) The registrar shall forward to each party to a review or reference a copy of any report or further report furnished to the Court under this rule.

Fresh evidence on review

5. (1) On a review under section 36 of the Act of the decision of a commissioner, evidence that was not adduced before the commissioner shall not be adduced without leave of the Court.

(2) The Court may if it thinks fit refuse to grant leave under subrule (1) unless it is satisfied that there was good reason why the evidence was not adduced before the commissioner.

Directions on review or reference

6. An application to the Court for directions in respect of a review under section 36 of the Act of a decision of a commissioner, or a reference by a commissioner under section 37 of the Act, may be made by any party at any time after the application for the review, or the reference, is made.

PART 31—REGISTRARS

Interpretation

1. (1) A function conferred or imposed on a registrar under rule 2 shall be in addition to, and not in substitution for, or derogation from, any function conferred or imposed on a registrar by or under any other law.

(2) A function conferred or imposed on a registrar under any of the rules may be exercised by a Judge.

Functions

2. Except where a Judge otherwise orders or the rules otherwise provide, a registrar may, with respect to any proceedings, exercise the functions of the Court to—

- (a) make any order consented to by—
 - (i) the parties to the application for the order; and
 - (ii) any other person who will be required to comply with the order or to suffer anything to be done under the order;
- (b) refer any proceedings, or any matter arising from any proceedings, to arbitration;

- (c) make any order prescribed in the event of failure by a party to comply with a requirement by another party to—
 - (i) produce documents for inspection;
 - (ii) produce documents at the hearing of the proceedings or any ancillary proceedings;
 - (iii) attend for a medical examination; or
 - (iv) make admissions for the purposes of the proceedings;
- (d) order that—
 - (i) a party give discovery of documents to any party;
 - (ii) a party produce documents for inspection by any party;
 - (iii) a party produce documents at the hearing of the proceedings or any ancillary proceedings;
 - (iv) the evidence of a witness be allowed to be taken on an examination before the hearing of the proceedings;
 - (v) a party attend for a medical examination; or
 - (vi) a party give further particulars of any application for determination, third or subsequent party notice or answer filed by him;
- (e) make any order prescribed in the event of failure of a person to comply with an order made by the Court or a registrar in the exercise of a function referred to in paragraph (d);
- (f) make orders—
 - (i) for substituted service of process;
 - (ii) in respect of the joinder, misjoinder and non-joinder of parties;
 - (iii) in respect of the amendment of documents;
 - (iv) that the hearing of proceedings or ancillary proceedings be expedited or adjourned;
 - (v) that proceedings be heard together;
 - (vi) enlarging or abridging time;
 - (vii) staying proceedings, subject to the stay subsisting only pending a hearing by the Court set down for the first available day; and
 - (viii) striking out proceedings in respect of which a request for listing is not filed within 3 months after the date of commencement of proceedings in the Court;
- (g) authorise a party or his solicitor or barrister to inspect documents produced to a registrar in compliance with a subpoena to produce documents, and to take copies of any such documents, subject to

any undertaking required by a registrar to be given, and for the purposes only of this paragraph to rule on any objection based on privilege; and

- (h) except where otherwise provided in section 18 of the Act, make an order for costs in respect of any order made or refused by that registrar under the rules and in respect of any call-over mention or conference presided over, or scheduled to be presided over, by that registrar.

Where registrar may exercise functions

3. (1) Subject to the rules, where a registrar is authorised to exercise a function he may exercise that function—

- (a) in Court; or
- (b) in chambers,

in such circumstances and on such terms as the registrar thinks fit.

(2) Without limiting the generality of subrule (1), a registrar may exercise any function, if he is authorised to exercise the function, during or with respect to the conduct of a call-over or mention referred to in Part 12 rule 4 or a pre-hearing conference mentioned in Part 12 rule 5.

Mandatory order and removal

4. (1) The Court may by order direct a registrar or any other officer of the Court to do or refrain from doing, in any proceedings, any act relating to the functions which he is authorised to exercise.

(2) Subject to any direction by a Judge, an application for an order under subrule (1) shall be made by notice of motion under Part 14, and the officer concerned shall be, for the purposes of Part 14 rule 2(1), an interested party.

(3) The Court, before the conclusion of any proceedings before a registrar, may, on application by a party, order that the proceedings be removed into the Court, and upon such removal the Court may—

- (a) hear and determine the question or matter in respect of which the proceedings were before the registrar; or
- (b) hear and determine any question or matter in the proceedings and remit the proceedings to the registrar with such directions as the Court thinks fit.

Application for review

5. (1) In this rule, “review” means review under section 36 of the Act.

(2) An application for review of a decision of a registrar may be made orally to the registrar immediately after he gives the decision.

(3) Subject to subrule (2), an application for review of a decision of a registrar shall be made by notice of motion under Part 14.

(4) An application for review of a decision of a registrar shall be made within 14 days after the decision is given.

Report on review or reference

6. (1) Where a decision of a registrar is the subject of an application for review under section 36 of the Act, the registrar shall prepare and furnish to the Court a report as to all findings of fact made, and inferences drawn, by him leading to the decision, and any other matter which in his opinion is likely to be of assistance to the Court in determining the review.

(2) Where a registrar refers to the Court a question or matter arising in proceedings before him, he shall prepare and furnish to the Court a report as to all findings of fact made, and inferences drawn, by him relevant to the question or matter, and as to any other matter which in his opinion is likely to be of assistance to the Court in determining the reference.

(3) The Court may if it thinks fit request a registrar who has furnished a report under subrule (1) or (2) to prepare and furnish a further report as to any matter which the Court thinks is likely to be of assistance to it with regard to the review or reference, and the registrar shall comply with any such request.

(4) The registrar shall forward to each party to a review or reference a copy of any report or further report furnished to the Court under this rule.

Fresh evidence on review

7. (1) On a review under section 36 of the Act of the decision of a registrar, evidence that was not adduced before the registrar shall not be adduced without leave of the Court.

(2) The Court may if it thinks fit refuse to grant leave under subrule (1) unless it is satisfied that there was good reason why the evidence was not adduced before the registrar.

Directions on review or reference

8. An application to the Court for directions in respect of a review under section 36 of the Act of a decision of a registrar, or a reference by a registrar under section 37 of the Act, may be made by any party at any time after the application for the review, or the reference, is made.

PART 32—DOCUMENTS**Heading and title**

1. (1) Subject to subrule (2), a document filed in the Court for the purpose of any proceedings shall be headed in the Court and in the full names of the parties, and shall bear immediately under the names of the parties a brief statement as to the nature of the document.

(2) Except in the case of—

- (a) originating process;
- (b) a document to be served on a person not before the service a party to the proceedings;
- (c) a form of award; or
- (d) a certificate under section 23 (1) of the Act,

a document may bear an abbreviation of the title of the proceedings sufficient to identify the proceedings.

Forms

2. (1) It shall be sufficient compliance with any requirement of the Act or the rules as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

(2) The Chief Judge may from time to time cause to be published forms approved for use in the Court, and all documents filed in any proceedings shall be in forms similar to the forms so approved where those forms are applicable, and where no approved form is applicable to any document the document shall be framed to the satisfaction of the registrar.

General requirements

3. (1) This rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impossible.

(2) There shall be lodged with any document as many copies of the document as there are parties to be served.

(3) A document shall be on paper of durable quality, capable of receiving ink writing, and of about “A4” standard size.

(4) Subject to subrule (7), the writing on a document shall be on one face of the paper only, and a margin of not less than 25 millimetres shall be kept clear on the left hand side.

(5) The writing on a document shall be clear, sharp, legible and permanent.

(6) A document shall, unless required to be signed by some other person, be signed by the party filing it, or by his solicitor or agent given leave by the Court to appear in the proceedings.

(7) A document shall have endorsed upon the back, or upon a separate backsheet—

- (a) the number and year of the proceedings;
- (b) the heading and title of the proceedings, appropriately abbreviated;
- (c) a short description of the document; and
- (d) the name, address, telephone number and any Australian Document Exchange box number of the solicitor or agent for the party, and, if the solicitor acts in the proceedings by an agent, of the solicitor’s agent, or, if the party acts in person, a notice to that effect.

(8) Except where otherwise proscribed, a carbon or photostat copy of a document shall not be filed.

(9) A document shall not be filed if it bears any blotting, erasure, or such alteration as to cause material disfigurement, or if it is in an unclean or other objectionable condition.

(10) A document shall not be filed if, by reason of any defect or failure to comply with any rule or otherwise, the document would if filed be ineffective for the purpose for which it is lodged for filing.

(11) A registrar shall assist a party appearing in person who is illiterate or otherwise unable to complete properly any necessary document, but shall not in doing so advise the party as to the conduct of his case.

Words and figures

4. Dates, amounts and other numbers in any document filed in any proceedings shall be expressed in figures and not in words.

Signature of solicitor

5. A document, other than an affidavit, filed in any proceedings and requiring the signature of the solicitor on the record or his agent may be signed by the solicitor or agent, or by the partner, or the clerk or other employee, of the solicitor or agent.

Striking out documents etc.

6. The court may at any stage of any proceedings, on application or of its own motion, strike out any document, or any part of any document, filed in the proceedings, or direct that any such document be amended, or make such other order as it thinks fit regarding any such document.

Notice of rejection

7. Where a registrar rejects a document filed or tendered for filing he shall, either orally or in writing, give notice of the rejection and the reasons therefore to the party requiring the document to be filed.

Sealing duplicate documents

8. Where any document under the seal of the court is lost or destroyed, the registrar may from time to time seal a duplicate of the document upon proof to his satisfaction, by affidavit or otherwise, of the loss or destruction.

PART 33—SOLICITORS**Power to act by solicitor**

1. (1) Every matter or thing in relation to any proceedings which under the Act or the rules or otherwise by law is required or allowed to be done by a party may be done by his solicitor on the record of the proceedings.

(2) Subrule (1) does not apply where the context or subject-matter otherwise indicates or requires.

Adverse parties

2. Where a solicitor or his partner acts as solicitor for any party to any proceedings, or is a party to any proceedings, that solicitor shall not, without leave of the Court, act for any other party to the proceedings not in the same interest.

Appointment of solicitor

3. (1) Where a solicitor signs, and files on behalf of a party in any proceedings, any originating process, notice of appearance, answer, or third or subsequent party notice, the solicitor shall be the solicitor of the party on the record of the proceedings.

(2) Where a party acts for himself in any proceedings and afterwards appoints a solicitor to act for him in the proceedings, the party or the solicitor shall sign and file notice of the change and serve the notice on the other parties to the proceedings.

Change of solicitor etc.

4. (1) Where a solicitor acts for a party in any proceedings, the party may change his solicitor.

(2) Where a party changes his solicitor, he, or his new solicitor, shall sign and file notice of the change and serve the notice on the other parties, and, where practicable, the former solicitor of the party.

(3) Where a solicitor (in this subrule called the principal solicitor) acts for a party in any proceedings and another solicitor acts as agent for the principal solicitor in the proceedings, and the principal solicitor changes the solicitor acting as agent, the party, or the principal solicitor, or the new agent, shall sign and file notice of the change and serve the notice on the other parties and, where practicable, the former agent solicitor.

(4) Where a solicitor acts for a party in any proceedings and afterwards the party, without changing his solicitor, determines the authority of the solicitor to act for him in the proceedings—

- (a) the party shall sign and file notice of the change and serve the notice on the other parties, and, where practicable, his former solicitor; or
- (b) the former solicitor may sign and file notice of the change and serve the notice on the parties.

(5) Where a solicitor acts for a party in any proceedings and afterwards ceases to act, the solicitor may, subject to subrule (6), sign and file notice of the change and serve the notice on the parties.

(6) A solicitor shall not file or serve a notice of change under subrule (5) without leave of the Court unless he has, not less than 7 days before doing so, served on his former client notice of his intention to file and serve the notice of change.

(7) A solicitor filing a notice of change under subrule (5) shall, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with subrule (6).

(8) A solicitor may serve a notice under this rule on his former client by posting it to the former client at the residential or business address of the former client last known to the solicitor.

When change takes effect

5. Any change mentioned in rule 3 (2) or in rule 4 shall take effect, and a solicitor shall become or cease to be the solicitor of a party on the record or the agent of that solicitor, as the case may require, when any filing and service required by rule 3 (2) or 4 has been completed.

PART 34—ARBITRATION

Interpretation

1. In this part—

“**arbitrator**” means an arbitrator appointed under rule 2;

“**proceedings**” means proceedings before the Court and includes any matter arising from any proceedings;

“**referred proceedings**” means proceedings the subject of an unrevoked order under rule 5 (1).

Appointment to office as arbitrator

2. (1) The Chief Judge may by instrument in writing appoint suitable persons to be arbitrators to hear referred proceedings.

(2) A person is not a suitable person for the purposes of subrule (1) unless he is—

(a) a barrister nominated by the New South Wales Bar Association in writing signed by the President or a Vice-President of that Association; or

(b) a solicitor nominated by the Law Society of New South Wales in writing signed by the President or Vice-President of that Society.

(3) The Chief Judge—

(a) may, by instrument in writing, revoke the appointment of an arbitrator; and

(b) shall, at the written request of the Association or Society which nominated the arbitrator for appointment, so revoke the appointment.

(4) An arbitrator may resign his office by instrument in writing delivered to the Chief Judge.

Roster of arbitrators

3. The Chief Judge or the registrar may at any time and from time to time—

- (a) fix days on which arbitrators may hear referred proceedings at the court;
- (b) alter any day so fixed;
- (c) roster arbitrators to attend the Court on any day so fixed; and
- (d) alter any such roster.

Remuneration of arbitrators

4. (1) The remuneration of an arbitrator shall be the same remuneration as is from time to time determined by the Minister in pursuance of section 5 (8) of the Arbitration (Civil Actions) Act 1983.

(2) The remuneration due to an arbitrator shall be paid to him, out of moneys paid under section 19 (2) (c) of the Workcover Administration Act 1989, on the certificate of the registrar.

Referral to arbitration

5. (1) The Chief Judge or a registrar may, if he thinks fit and with the consent of all parties concerned, at any stage of any proceedings which appear to be ready for hearing, by order refer the proceedings for hearing before an arbitrator at the Court.

(2) An order under subrule (1) shall specify a day for the hearing of the proceedings before the arbitrator, and on that day the proceedings shall be listed for hearing before any arbitrator who is rostered to attend the court on that day.

(3) The Chief Judge or registrar shall, before making an order under subrule (1) in relation to any proceedings—

- (a) consider the preparations for hearing;
- (b) so far as possible, deal with all matters that may be dealt with on application to the Court before the hearing; and
- (c) give such directions for the conduct of the proceedings before the arbitrator as appear best adapted for the just, quick and cheap disposal of the proceedings.

(4) The Court may, at any time before the making of an award under rule 12 (1) in relation to any proceedings the subject of an order under subrule (1), revoke the order and give directions for the subsequent conduct of the proceedings and as to any costs incurred before the revocation of the order.

Procedure before arbitrator

6. (1) For cause shown by a party to referred proceedings listed before an arbitrator, the arbitrator may, if he thinks fit, adjourn the arbitration to a date fixed by the registrar.

(2) Without prejudice to the operation of subrule (1), an arbitrator may hear and determine proceedings listed before him whether any party appears or not.

(3) Except to the extent that the Act, the Compensation Act, or any directions given by the Chief Judge or a registrar when referring the proceedings to arbitration, otherwise provide, the procedure at an arbitration under this Part shall be determined by the arbitrator.

(4) Subject to the rules of evidence being complied with, an arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

Appearances

7. A party to any referred proceedings may appear before the arbitrator in person, by counsel or solicitor, or, by leave of the arbitrator, by an agent.

Subpoenas

8. A subpoena in respect of referred proceedings may be made returnable before the arbitrator.

Evidence

9. (1) Subject to subrule (4), evidence given in referred proceedings shall be given and received in the same way as it would be given and received before the Court.

(2) Without prejudice to any arrangement made by a party for the recording of evidence in referred proceedings, subrule (1) shall not be construed as requiring any such evidence to be recorded.

(3) An arbitrator may administer an oath or take an affidavit for the purpose of referred proceedings.

(4) Documents purporting to be hospital clinical notes and records, doctors' records, workers compensation records and wages records shall, unless the arbitrator otherwise directs, to the extent that they are admissible in evidence on the hearing of the referred proceedings, be so admissible without further proof as to their identity.

Refusal or failure to take oath etc.

10. (1) Where, at the hearing of referred proceedings, a witness—

- (a) refuses or fails to take an oath when required by the arbitrator to do so; or
- (b) refuses or fails to answer a question that he is required by the arbitrator to answer,

the arbitrator or a party to the proceedings may apply to the Court for an order that the witness attend before the Court for examination.

(2) Where application is made for an order under subrule (1), the Court shall, unless satisfied that there was a reasonable excuse for the refusal or failure of the witness to take the oath or answer the question, make the order applied for.

(3) Where the Court makes an order under subrule (1) it may also order the transmission to the arbitrator of the record of any evidence given pursuant to an order under subrule (1), and any such evidence shall be deemed to have been given at the hearing before the arbitrator.

Contempt

11. An arbitrator may direct a person who—

- (a) wilfully insults—
 - (i) the arbitrator while he is hearing referred proceedings or proceeding to or from such a hearing; or
 - (ii) a person in attendance at such a hearing or proceeding to or from such a hearing;
- (b) wilfully misbehaves during the hearing of referred proceedings;
- (c) wilfully and without lawful excuse interrupts the hearing of referred proceedings;
- (d) assaults or wilfully obstructs an arbitrator or other person during the hearing of referred proceedings; or
- (e) without lawful excuse, disobeys a lawful direction given to him by the arbitrator during the hearing of referred proceedings,

to remove himself from the sitting of the arbitrator at which the contravention occurs.

Determination by arbitrator and award

12. (1) The issues in dispute in referred proceedings shall be determined by the arbitrator on the evidence adduced before him, and the arbitrator shall record his determination by an award in writing signed by him and forwarded by him to the registrar as soon as practicable.

(2) An award mentioned in subrule (1) shall contain, or have attached to it, a report of all findings of fact made by the arbitrator necessary to his determination, and the reasons for his determination, being reasons that, in the opinion of the arbitrator, are sufficiently stated to make the parties aware of his view of the case made by each of them.

(3) The registrar shall, forthwith after receiving the award of an arbitrator, send to each of the parties to the proceedings to which the award relates, or to the representative of such a party, a copy of the award on which he has endorsed the date of sending and the registrar's notice as to the listing of the proceedings under subrule (4).

(4) The registrar shall list the proceedings for mention before him on a date 28 days after the sending of the award under subrule (3), or a date as soon as practicable after that date.

(5) A party shall be taken to consent to the entry of the award of the arbitrator as the decision of the Court in the proceedings unless the party, before the date fixed by the registrar for the mention of the proceedings under subrule (4), files a notice of objection and serves that notice on each other party.

(6) Where a party files and serves notice of objection under subrule (9), the award of the arbitrator ceases to have effect, and the proceedings shall be heard and determined in the Court as if they had never been referred to arbitration.

(7) On the mention of the proceedings as referred to in subrule (4), the registrar shall—

- (a) if a party has filed notice of objection under subrule (5), give directions as to the further hearing of the proceedings; or
- (b) if no party has filed notice of objection under subrule (5), enter the award of the arbitrator as the decision of the Court in the proceedings.

(8) An award entered by the registrar under subrule (7) (b) shall for all purposes be deemed to be the decision of the Court in the proceedings.

(9) Without affecting the generality of subrule (6), a subpoena for the giving of evidence or production of documents, at a rehearing before the Court of any proceedings, by the arbitrator to whom the proceedings were referred under rule 5, shall not be issued if the evidence relates or the documents relate to the arbitration.

Costs

13. An arbitrator may make, in respect of the hearing of referred proceedings before him, any order as to the payment of fees or costs that

the Court might have made in respect of the hearing of the proceedings if the proceedings had been heard before the court.

PART 35—MISCELLANEOUS

Notices

1. (1) A notice required by the rules to be given shall be in writing, unless authorised by the rules or by the Court to be given orally.

(2) Where the registrar gives or sends in respect of any proceedings a notice required by the rules to be given or sent by him, he shall make on an appropriate document filed in the proceedings a notation of the date on which the notice is given or sent.

Corporation acting in person

2. (1) For the purposes of the Act and the rules, and subject to Part 11 rule 1 (1), a corporation may authorise an officer of the corporation to sign any document, or do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be deemed to be signed or done by the corporation.

(2) An authority given by a corporation to an officer of the corporation for the purposes of subrule (1) shall be under the seal of the corporation, and shall, before the officer so authorised takes any step in any proceedings by virtue of the authority, be lodged with the registrar.

(3) An authority may be lodged for the purposes of subrule (2) by the lodging of the authority, or a copy of the authority prepared by photographic or other similar process.

(4) An authority mentioned in subrule (2) may be expressed to be for the purposes only of the proceedings named in the authority or for the purposes of all proceedings brought, or to be brought.

(5) An authority mentioned in subrule (2) shall, after being lodged with the registrar for the purposes of that subrule, remain in force until revoked by the lodging with the registrar of a revocation signed by the secretary or other public officer of the corporation.

Searches

3. (1) A party to any proceedings may search the file kept by the registrar in respect of the proceedings.

(2) A person other than a party to any proceedings or the solicitor for the party shall not search the file kept by the registrar in respect of the proceedings except by leave of the Court or registrar.

(3) Notwithstanding subrule (2), a registrar shall make available for the inspection of an officer appointed by the Auditor General any book, file or other record kept by the registrar, whether or not it is a book of account, which is required by the officer in the course of his duties.

Striking out ancillary proceedings

4. (1) The Court may, if it thinks fit, strike out any proceedings ancillary to any proceedings in the Court at any time on terms, and a registrar may, if he thinks fit, strike out any ancillary proceedings before him on terms, and, without affecting the generality of the foregoing provision of this subrule, the Court or registrar may so strike out any ancillary proceedings if—

- (a) no party appears; or
- (b) a respondent to the ancillary proceedings does, but the applicant in the ancillary proceedings does not, appear.

(2) Where ancillary proceedings are struck out under subrule (1), the Court (or, where the ancillary proceedings are struck out by a registrar, the registrar or the Court) may, on the application of any party, order that the ancillary proceedings be reinstated on terms, and, without affecting the generality of the foregoing provisions of this subrule, the ancillary proceedings may be reinstated upon such terms and conditions as to costs, the staying of the proceedings or the ancillary proceedings until payment of costs, and the priority of the hearing of the ancillary proceedings as the Court or registrar, as the case may require, thinks fit.

(3) Subrule (2) applies except where otherwise provided in section 18 of the Act.

ANNEXURE “A”

SCHEDULE OF COUNSEL’S FEES

Brief on hearing

Head of Claim	<i>Amount recovered not exceeding</i>			<i>Amount recovered over</i>
	\$5,700	\$11,400	\$15,200	\$15,200
	\$	\$	\$	\$
1. Property damage	240	240	240	240
2. Medical hospital, etc.	240	323	430	430
3. Commutations and redemptions (Where the amount recovered exceeds \$50,700 the brief fee shall be \$445.00)	170	220	290	340
4. Lump sum loss of faculties	190	265	355	530
5. Weekly payments (closed period)	285	370	495	747
6. Weekly payments (continuing period) or claims under s.67 of the Compensation Act	390	475	635	800
7. Death Claims In death claims where liability is admitted subject only to formal proof of marriage, dependency or other similar issue, a brief fee will be allowed only if specially ordered by the Court.	440	525	695	800
8. Declaration of liability—\$295.				
9. Examination under Part 21—\$140.				

10. Conferences—

Where brief fee does not exceed \$255—\$42;

Where brief fee exceeds \$255 but does not exceed \$410—\$50;

Where brief fee exceeds \$410 but does not exceed \$615—\$72;

Where brief fee exceeds \$615—\$92.

Other conference if certified—\$100—\$250.

11. Refreshers—

Where the hearing is not concluded on the day on which it is begun, there will be allowed, unless the Court otherwise orders, in respect of each further day on which the hearing continues—
for more than 3 hours, a refresher of two-thirds; or
for 3 hours or less, a refresher of one-half,
of the brief fee.

In respect of hearings outside the Sydney metropolitan area—

(a) a full refresher will be allowed in respect of any subsequent day on which the hearing continues at a town other than that at which it commenced;

(b) unless the Court otherwise orders, no refresher will be allowed in respect of a hearing which continues at another town on the day on which it commenced; and

(c) no loading will be taken into account in calculating any refresher.

12. Where the hearing is adjourned upon an order for payment of the costs of the day—\$196.

13. Motions, including motions for suspension of weekly payments, or to state a case—\$117.

14. Settling request for a case to be stated and settling the case, including associated conferences and attendances before the Court—\$230.

15. Other settling—\$91.

16. Advice on evidence, if certified to by the Court—\$91.

17. View, if certified to by Court—\$133 and \$95 for each hour after the first.

18. To take reserved judgment, if certified to by Court—\$65.

19. Attending on pre-hearing conference, where the registrar thinks it appropriate for counsel to attend—\$230.

20. Mentions, where the registrar thinks it appropriate for counsel to attend—\$50; or, where questions of privilege or matters of a like nature are argued—\$50, or \$95 per complete hour, whichever is the greater.

21. Loadings—

(a) In respect of any proceedings heard or partially heard outside the Sydney metropolitan area, counsel whose chambers are in Sydney shall be entitled to a loading for the first day only, in accordance with a determination in force of the Legal Fees and Costs Board, and where a town has not been included in the determination the loading for that town shall be the loading for the nearest town that is so included.

(b) Where a hearing takes place at 2 or more country towns, the loading payable is that appropriate to the furthest of those towns.

(c) Where of the proceedings commenced, or continued to be heard, at a country town on any one day, counsel holds a brief on hearing in 2, a loading of one-half of the full loading will be allowed in respect of each brief, and where counsel holds more than 2 such briefs on hearing, a loading of one-third of the full loading will be allowed in respect of each brief.

23. Fees for Queen's Counsel or more than one counsel will not be allowed without an order of the Court.

24. Unless otherwise ordered, fees for Queen's Counsel will be those for junior counsel plus one-half.

25. Pre-hearing conference before the registrar—\$95.

26. Counsel's fees for conducting a review of a decision of a commissioner under section 36, or a reference by a commissioner under section 37, of the Act shall, unless the Court otherwise orders, and whatever be any amount recovered or deemed to be recovered, be the maximum amount prescribed in this Schedule in respect of such a head of claim as gave rise to the review or reference.

27. The Court may in a special case order that fees additional to those provided in this Schedule be payable to counsel.

ANNEXURE “B”

SCHEDULE OF SOLICITORS’ COSTS

<i>Preparing process</i>	\$
1. Preparing originating process, notice of appeal to the Court, notice of application for leave to make an appeal to the Court, or third or subsequent party notice, including necessary copies	35.00
2. Preparing further particulars, when required by an opposite party, including copy to file	10.50
3. Preparing subpoena to give evidence, including copy for service and attending to issue—each witness	10.50
4. Preparing subpoena to produce documents or things, including copy for service and attending to issue—each witness	20.50
<i>Notices etc.</i>	
5. Preparing notice to produce or admit documents, or to admit facts, including necessary copy	12.50
Or, if special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	10.00
6. Preparing notice of motion, not being in respect of an ex parte application, including necessary copies	12.50
Or, if special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	10.00
7. Preparing request for listing or any other necessary or proper notice or demand not otherwise provided for, including necessary copies	10.00
Or, if special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	10.00
8. Preparing certificate of readiness where required, including necessary copies	12.50
Or, if special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	10.00
<i>Service</i>	
9. Service or attempted service by a solicitor or his employee, where service by post is not authorised	12.50

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| 10. For each kilometre beyond 3 kilometres necessarily travelled in attempting to serve any process, to be allowed once only in respect of one address, the kilometres allowed to be reckoned one way only and not to exceed | 160.60 |
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NOTES:

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| 1. A fee will not be allowed under item 9 or 10 unless the registrar is satisfied that the bailiff could not have served the process within a reasonable time, or that service by the solicitor, rather than by the bailiff, has materially decreased the costs of service.

2. Where in the same proceedings any 2 or more process have, or could have, been served together, a fee may be allowed under item 10 in respect of only one of the process. | |
| 11. Service of any process which is authorised to be served by post | 5.00 |

Instructions

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| 12. To commence or defend proceedings, or for third or subsequent party notice | 25.00 |
| 13. For any necessary affidavit which, in the opinion of the registrar, cannot be prepared from information already known to the solicitor | 16.00 |
| 14. For counsel to advise on evidence | 25.00 |

Preparing for hearing

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| 15. Whether counsel employed or not, for work necessarily done in preparing for hearing and not otherwise provided for, including— | |
| (a) taking instructions for examination of any party or witness;
(b) considering the facts or law;
(c) attending on and corresponding with client;
(d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;
(e) arranging to obtain reports or advice from experts and maps, plans, photographs and models; | |

- (f) making search in any public office and elsewhere for relevant documents;
- (g) inspecting any property or place material to the proceedings;
- (h) perusing relevant documents; and
- (i) the general care and conduct of the proceedings,
 - (i) where the hearing is on a simple application to the Court or an examination under Part 21 35.00
 - (ii) otherwise discretionary

NOTES:

1. This item should begin with a short statement of—
 - (a) the main issues;
 - (b) any particular difficulties of fact or law;
 - (c) any special skill, knowledge or responsibility required.
2. This should be followed not by a chronological narrative, but by an analysis of the work done, separated under main headings appropriate to the subject matter. Under a heading of, for example, “attendances on and correspondence with client” there should be included a statement of the number of attendances on the client, the total time occupied and the number of letters sent, but not the details of every attendance or letter.
3. A separate allowance will not be made under the heading of “skill, care and responsibility” or the like, but the registrar may be asked to mark the amount allowed in respect of each matter set out under this item.

Drawing

16. Any document necessarily or properly filed or delivered to another party or to counsel or the Court and not otherwise provided for, per page 10.00

NOTES:

1. The costs of unnecessary, irrelevant and prolix matter in documents will be disallowed.
2. Where a fee is allowed for drawing a document, no fee will be allowed for engrossing the document.

Copies

17. Of any document, where no other provision is made,
per page copied 1.20

NOTE:

A fee will not be allowed for any copy unless the registrar is satisfied that the copy was necessary and that no copy previously prepared was available.

Perusals

18. Of originating process, third or subsequent party
notice, or answer, per page 10.00
19. Of notice to produce or admit 16.00
20. Of draft of special order or award prepared by
registrar 15.00

NOTES:

1. A fee will not be allowed for re-perusing any document if a fee has previously been allowed for perusing the document.
2. A fee for perusing a party's own document will be allowed only if the registrar is of opinion that the special circumstances of the case warrant it.

Attendances

21. To file any document not otherwise provided for 10.00
22. To inspect documents or produce documents for
inspection 16.00
Or, per hour 25.00
23. To obtain or give any necessary or proper consent or
admission 10.00
24. On examination of a witness under Part 21, without
counsel 50.50
And for each complete hour after the first hour 25.00
25. On examination of a witness under Part 21, with
counsel 25.00

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26. On deponent to swear an affidavit or for a solicitor or his clerk to swear an affidavit	8.00
27. On counsel with brief	12.50
28. To appoint conference	7.00
29. On conference with counsel, per hour	35.00
30. On a pre-hearing conference, call-over, mention or interlocutory application:	
—with counsel, per hour	35.00
—without counsel, per hour	54.00
31. In Court on the hearing of any proceedings:	
—with counsel, per hour	54.00
—without counsel, per hour	70.00

NOTES:

1. Where the solicitor, or his partner or employee who is a solicitor, does not attend in person, an amount in the discretion of the registrar will be allowed instead of any amount under item 30 or 31.
 2. Subject to Note 1, where the hearing of any proceedings is not reached, or is adjourned upon payment of the costs of the day, there may be allowed in respect of any time lost thereby in awaiting the commencement of the hearing an amount not exceeding the amount that would have been allowed under item 30 or 31 if that time had been spent in the hearing of the proceedings.
 3. Where the solicitor is engaged in any other proceedings on the same day, the amount under item 30 or 31 will be such proportion only as the registrar thinks reasonable, having regard to all the circumstances.
 4. Where a party is not notified of any payment, withdrawal or discontinuance in time to prevent attendance at Court, there may be allowed for that attendance an amount in the discretion of the registrar not exceeding the amount claimable under item 31 for one hour's attendance appropriate to the proceedings.
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| 32. To take, with or without counsel, a deferred judgment | 25.00 |
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33. On taxation of costs	25.00
Or, per hour	35.00
34. Any telephone attendance not otherwise provided for	5.50
35. Any attendance not otherwise provided for	10.00
Or, per hour	35.00
36. Travelling and waiting time—per hour	30.90
or, in the case of a clerk, per hour	15.45

Letters

37. Form letters	5.50
38. Letters other than form letters	10.00
Or, if special or necessarily lengthy, such amount as the registrar thinks fit.	

Disbursements

39. For procuring certificates, office copies or other documentary evidence which the registrar thinks necessary and proper, such amount as is just and reasonable, not exceeding the amount actually paid.	
40. For the necessary expenses of postage, telex, telegrams, and the carriage and transmission of documents, such amount as is just and reasonable, not exceeding the amount actually paid.	
41. Court fees, bailiff's fees, and other fees and payments which, in the opinion of the registrar, have been properly paid, and which are not otherwise provided for.	
42. For preparing plans, charts or models for use at the hearing, where the Court has not disallowed the costs of the same, such amount as is just and reasonable, not exceeding the amount actually paid.	
43. Fares reasonably incurred in respect of any attendance	
44. Amounts reasonably paid to interpreters, not exceeding—	
(a) in respect of a hearing of 1/2-day's duration	107.00
(b) in respect of a hearing of 1 day's duration	48.00
(c) in respect of a conference held on the day of hearing	17.00

(d) in respect of a conference held other than on the day of hearing or a medical examination by a non-treating specialist	50.00
And, for each half-hour after the first hour	17.00
Maximum fee for any conference or examination	82.00

General

45. In any case not otherwise provided for in this Schedule, and in which in the opinion of the taxing officer an allowance should be made, such amount may be allowed as is just and reasonable.

T. J. DOUBLEDAY
Secretary of the Compensation Court Rule Committee
