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WORKERS COMPENSATION COMMISSION RULES

Workplace Injury Management and Workers Compensation Act 1998

Order under section 364

I, the Hon. Victor Dominello MP, Minister for Customer Service, pursuant to section 364 of the *Workplace Injury Management and Workers Compensation Act 1998*, do by this my Order amend the Workers Compensation Commission Rules 2011 in the manner set out in the Schedule hereto.

These amendments take effect on and from 3 October 2019.

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Minister for Customer Service

**Schedule to Order under Section 364
2019 amendment to Workers Compensation Commission Rules 2011**

Rule	Amendment
8.1(7)	<p>Service of documents by or on Commission and lodging of documents</p> <p>Delete from subrule 8.1(7)(b) the word: “fourth”</p> <p>and replace with the word “seventh”.</p> <p>Amended subrule 8.1(7)(b) to read:</p> <p>(b) if by post, on the seventh day after the day of sending by prepaid post,</p>
8.4(2)(b)	<p>Service at address for service</p> <p>Delete from subrule 8.4(2)(b) the word: “fourth”</p> <p>and replace with the word “seventh”.</p> <p>Amended subrule 8.4(2)(b) to read:</p> <p>(b) if by post, on the seventh day after the day of sending by prepaid post,</p>
10.3(3)	<p>Material to be lodged in proceedings</p> <p>Delete from subrule 10.3(3)(b) and 10.3(3)(c) the words: “5 working days”</p> <p>and replace with: “3 working days”</p> <p>Amended subrule 10.3(3) to read:</p> <p>(3) Where a party wishes to rely on a document not lodged and served in compliance with section 290 of the 1998 Act and subrule (1), the party must:</p> <p>(a) as soon as practicable after becoming aware of the document or obtaining possession of the document, serve a copy on all other parties; and</p> <p>(b) not later than 3 working days prior to a medical assessment or telephone conference, on one occasion only and by the approved form, lodge all documents not previously lodged; and</p> <p>(c) not later than 3 working days prior to an arbitration hearing, on one occasion only and by the approved form, lodge all documents not previously lodged.</p>
12.1(1)	<p>Delete from subrule 12.1(1) the words: “Workers Compensation Regulation 2010”</p> <p>and replace with:</p> <p>“Workers Compensation Regulation 2016”</p> <p>Amended subrule 12.1(1) to read:</p> <p>(1) In this Part:</p> <p>document does not include a document that must be provided to a requesting party by a worker, employer or insurer in respect of a claim for compensation, whether upon request or</p>

	<p>otherwise, under the Workers Compensation Acts, the Workers Compensation Regulation 2016 or any related Workers Compensation Guideline, except where the worker, employer or insurer has failed to provide the document as and when required under any such provision.</p>
12.4(7)(a)-(c)	<p>Compliance with notice for production</p> <p>Delete from subrule 12.4(7) the words: “following the determination of an objection to a notice for production”</p> <p>Delete from subrule 12.4(7)(b) the words: “the subject of the objection”</p> <p>Insert into subrule 12.4(7)(c) the word: “any”</p> <p>Amended subrule 12.4(7) to read:</p> <p>(7) An Arbitrator or Registrar may:</p> <p>(a) set aside the notice for production in whole or in part, or</p> <p>(b) direct that the documents be produced to the requesting party or to the Commission, or</p> <p>(c) make any other order as the Arbitrator or Registrar thinks fit.</p>
12.5(2)	<p>Conduct money</p> <p>Delete from subrule 12.5(2) the words: “Workers Compensation Regulation 2010”</p> <p>and replace with: “Workers Compensation Regulation 2016”</p> <p>Amended subrule 12.5(2) to read:</p> <p>(2) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (1) is to be calculated in accordance with any relevant provision of the Workers Compensation Regulation 2016.</p>
13.4(2)(a)	<p>Direction for production</p> <p>Delete from subrule 13.4(2)(a) the words: “Workers Compensation Regulation 2010”</p> <p>and replace with: “Workers Compensation Regulation 2016”</p> <p>Amended subrule 13.4(2)(a) to read:</p> <p>(a) pursuant to an obligation imposed upon a worker, employer or insurer in respect of a claim for compensation, whether upon request or otherwise, under the Workers Compensation Acts, the Workers Compensation Regulation 2016, or any related Workers Compensation Guideline, or</p>
13.6(4)	<p>Conduct money and expenses</p> <p>Delete from subrule 13.6(4) the words: “Workers Compensation Regulation 2010”</p>

	<p>and replace with: “Workers Compensation Regulation 2016”</p> <p>Amended subrule 13.6(4) to read:</p> <p>(4) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (1) is to be calculated in accordance with any relevant provision of the Workers Compensation Regulation 2016.</p>
13.13(6)	<p>Summons – issue and service</p> <p>Delete from subrule 13.13(6) the words: “Workers Compensation Regulation 2010”</p> <p>and replace with: “Workers Compensation Regulation 2016”</p> <p>Amended subrule 13.13(6) to read:</p> <p>(6) The amount sufficient to meet the reasonable expenses of compliance referred to in subrule (5) (b) is to be calculated in accordance with any relevant provision of the Workers Compensation Regulation 2016.</p>
14.1(1)(a) & (b)	<p>Tapes, films, photographs, etc</p> <p>Delete from the heading to rule 14.1 the words: “Tapes, films, photographs, etc”</p> <p>And replace with the words: “Video, audio, films, photographs, etc”</p> <p>Delete from subrule 14.1(1)(a) the word: “tapes”</p> <p>Delete from subrule 14.1(1)(b) the word: “audio”</p> <p>Amended rule 14.1 to read:</p> <p>14.1 Tapes, films, photographs, etc</p> <p>(1) This rule applies to:</p> <ul style="list-style-type: none"> (a) video, and (b) audio, and (c) films or photographs, and (d) x-ray film, and (e) the results of specialised medical investigations, including computerised tomography, medical ultrasound and magnetic resonance imaging scans, and (f) any documents produced or received by electronic means, on which a party proposes to rely in any proceedings. <p>(2) Where a document to which this rule applies constitutes surveillance material, any investigator's report concerning the material:</p> <ul style="list-style-type: none"> (a) must clearly and unambiguously identify the material, and (b) is, for the purposes of subrule (3), deemed to be part of the document. <p>(3) A document to which this rule applies is, subject to this rule, a document for the purposes of rule 10.3.</p>

	<p>(4) In the case of documents referred to in subrule (1)(e):</p> <ul style="list-style-type: none"> (a) original films or scans are not to be lodged with the Commission, and (b) the lodging and service of a list describing and clearly identifying the films or scans satisfies the lodging and service requirements of rule 10.3, and (c) original films or scans may be taken or delivered to an approved medical specialist undertaking an assessment for the purposes of the relevant proceedings. <p>(5) A party who intends to take or deliver original films or scans as referred to in subrule (4) (c) in the course of proceedings must notify the Commission and the other parties to the proceedings by notice in writing, not less than 7 days prior to the taking or delivery, of the party's intention.</p>
16.2(1)-(18)	<p>Appeal against Arbitrator's decision</p> <p>Delete the whole of rule 16.2(1) – (13) and replace with new rule 16.2(1) – (18)</p> <p>New rule 16.2(1)-(18) to read:</p> <p>16.2 Appeal against Arbitrator's decision</p> <p>(1) A party to a dispute in connection with a claim for compensation may appeal under section 352 of the 1998 Act against a decision of an Arbitrator by application to the Registrar within 28 days after the making of the decision appealed against or within such extended time for making the appeal as may be ordered under subrule (5).</p> <p>(2) For the purposes of subrule (1), a decision is made, in respect of a dispute, when the Commission issues a certificate as to the determination of the dispute as required by section 294 (1) of the 1998 Act.</p> <p>(3) For the purposes of section 352 (4) of the 1998 Act, an appeal is made when the application is registered by the Registrar.</p> <p>(4) If the Registrar is not satisfied that the requirements of section 352 of the 1998 Act, or any applicable rules, regulations and Practice Directions as to the making of the appeal, have been complied with, he or she may particularise the non-compliance in a Direction to rectify procedural deficiencies, as an alternative to refusing to accept, seal, issue or register the document. The appeal will not proceed further until the Registrar is satisfied the appeal is procedurally compliant.</p> <p>(5) The Commission constituted by a Presidential member may, if a party satisfies the Presidential member, in exceptional circumstances, that to lose the right to appeal would work demonstrable and substantial injustice, by order extend the time for making an appeal.</p> <p>(6) A party who seeks an extension of time as referred to in subrule (5) must:</p> <ul style="list-style-type: none"> (a) as soon as practicable give notice to the other parties of the intention to seek the extension, and (b) lodge and serve with the application to appeal an application for the extension of time, including full details of the arguments to be put in favour of granting the extension. <p>(7) An application referred to in subrule (1) must have attached to it a copy of the certificate as to the determination of the dispute referred to in subrule (2), and must include, or have attached, full details of:</p> <ul style="list-style-type: none"> (a) the arguments in support of the appeal and, if necessary, arguments in support of leave to appeal an interlocutory decision, and (b) for the purposes of section 352 (3) of the 1998 Act, the amount of compensation alleged to be at issue on the appeal, and (c) any new evidence in respect of which leave is to be sought, by the party lodging the application, in accordance with section 352 (6) of the 1998 Act, and (d) if the party lodging the application wishes to object to the appeal being decided solely on the basis of the written application and any written notice of opposition lodged, the reasons for the objection, and

	<p>(e) an objective chronology of all key events leading up to the commencement of the proceedings. The chronology should not be a chronology only of those matters of assistance to the party preparing it.</p> <p>(8) The party lodging an application referred to in subrule (1) must serve a sealed copy of the application, including any attachments, on:</p> <p>(a) all other parties to the proceedings, and</p> <p>(b) where any of those parties is an employer (but not a self-insurer), the employer’s insurer, during the period of 7 days commencing on the day on which the Registrar registers the application.</p> <p>(9) The appellant must lodge a certificate of service within 7 days of the date of service, certifying service of the sealed application on the other parties.</p> <p>(10) Where a party seeks to oppose an application, that party must, within 28 days of being served with the application, lodge and serve on the other parties notice of that opposition.</p> <p>(11) A notice of opposition referred to in subrule (10) must include, or have attached, full details of:</p> <p>(a) the arguments in support of opposing the appeal and, if necessary, arguments in opposition to the granting of leave to appeal an interlocutory decision, and</p> <p>(b) for the purposes of section 352 (3) of the 1998 Act, the amount of compensation alleged to be at issue in the appeal, and</p> <p>(c) any new evidence in respect of which leave is to be sought, by the party lodging the notice of opposition, in accordance with section 352 (6) of the 1998 Act, and</p> <p>(d) if the party lodging the notice wishes to object to the appeal being decided solely on the basis of the written application and any notice of opposition lodged, the reasons for the objection.</p> <p>(12) The party opposing the application may file an alternative or supplementary chronology of events to that filed by the appellant in accordance with rule 16.2 (7)(e).</p> <p>(13) The party opposing the application must lodge a certificate of service within 7 days of the date of service, certifying service of the sealed notice of opposition on the other parties.</p> <p>(14) If the respondent wishes to contend that the Arbitrator’s decision should be affirmed on grounds other than those relied on by the Arbitrator, but does not seek a discharge or variation of any part of that decision, it must file a notice of contention.</p> <p>(15) The notice of contention must:</p> <p>(a) be lodged and served on each other party to the proceedings at the same time the notice of opposition in the proceedings is lodged and served, in accordance with subrule (10), and</p> <p>(b) state, briefly but specifically, the grounds relied on and submissions in support of the contention.</p> <p>(16) The respondent lodging a notice of contention must lodge a certificate of service within 7 days of the date of service, certifying service of the sealed notice of contention on each other party.</p> <p>(17) The appellant may lodge and serve on each other party submissions in reply to the notice of opposition and notice of contention, within 14 days of service of the notice of opposition and notice of contention.</p> <p>(18) The appellant must lodge a certificate of service within 7 days of the date of service, certifying service of the submissions in reply on each other party.</p>
17.2(2)(a)	<p>Threshold disputes</p> <p>Delete from subrule 17.2(2)(a) the words: “relevant Workers Compensation Guideline”</p> <p>and replace with: “Division 4, Part 3 of Chapter 7, and Division 2, Part 6 of Chapter 7 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i>”</p>

	<p>Amended subrule 17.2(2)(a) to read:</p> <p>(a) evidence that a claim has been made on the defendant or insurer in accordance with Division 4, part 3 of Chapter 7, and Division 2, part 6 of Chapter 7 of the <i>Workplace Injury Management and Workers Compensation Act</i> 1998 and that a threshold dispute exists as referred to in section 314 of the 1998 Act.</p>
17.5(2)	<p>Pre-filing defence</p> <p>Delete the whole of subrule 17.5(2): “(2) Without leave of the Commission, the failure of a worker to notify of an injury as and when required by the Workers Compensation Acts may not be raised as an issue in the pre-filing defence served by the defendant if that issue has not been included in the decision notice given in accordance with the 1998 Act.”</p> <p>New subrule 17.5 to read:</p> <p>17.5 Pre-filing defence (1) In accordance with section 316 of the 1998 Act, a pre-filing defence is to consist of a copy of the defence intended to be filed in the court of relevant jurisdiction and is to include as attachments the information and documents required by the Workers Compensation Acts and these rules. (2) repealed.</p>
17.7(6)	<p>Defective pre-filing statement</p> <p>Delete the whole of subrule 17.7(6): “(6) Where a defendant has given notification in accordance with section 317(1) of the 1998 Act and subsequently in respect of the same claim serves a pre-filing defence as referred to in rule 17.5: (a) The pre-filing statement is taken to have been served, and (b) The defendant is taken to have waived any allegation in the notification that the pre-filing statement is defective.”</p> <p>Amended subrule 17.7 to read:</p> <p>17.7 Defective pre-filing statement (1) Where a defendant has served notification in accordance with section 317 (1) of the 1998 Act, either party may refer the dispute to the Registrar for determination in accordance with section 317 (2) of the 1998 Act. The lodging party must lodge with the application the following: (a) a copy of the pre-filing statement, and (b) a copy of the defendant’s notification issued under section 317 (1) of the 1998 Act, and (c) submissions detailing the extent to which the pre-filing statement is disputed. (2) The party lodging an application referred to in subrule (1) must serve a sealed copy of the application, including any attachments, on: (a) all other parties to the proceedings, and (b) where any of those parties is an employer (but not a self-insurer), the employer’s insurer, within 7 days after the Registrar registers the application. (3) The party lodging an application must lodge a certificate of service within 7 days of the date of service, certifying service of the sealed application on the other parties. (4) A party may lodge submissions in reply to an application, within 14 days of being served. Upon receipt of submissions in reply, or on expiry of the period of 14 days, whichever occurs first, the dispute will be referred to the Registrar.</p>

	<p>(5) Where a dispute is referred for determination in accordance with subrule (4), the Registrar may:</p> <p>(a) give a direction for the filing of submissions and supporting documents upon which a party relies,</p> <p>(b) give a direction to the claimant as to the action necessary to cure any defect in the pre-filing statement, within a prescribed time, or</p> <p>(c) determine that the pre-filing statement served by the claimant is not defective.</p> <p>(6) repealed.</p>
17.12(2)	<p>Certificate of mediation outcome</p> <p>Delete the whole of subrule 17.12(2)(a) “(a) names and addresses of the parties to the dispute, and”</p> <p>Delete the whole of subrule 17.12(2)(b) “(b) the names of persons in attendance at the mediation, and”</p> <p>And renumber subrule 17.12(2)(c) as subrule 17.12(2)(a)</p> <p>And renumber subrule 17.12(2)(d) as subrule 17.12(2)(b)</p> <p>Amended subrule 17.12(2) to read:</p> <p>(2) A certificate of mediation outcome issued in accordance with section 318B of the 1998 Act is to include:</p> <p>(a) a statement that the parties failed to resolve the dispute and reach settlement, and</p> <p>(b) the final offers of settlement made by the parties to the mediation.</p>
18.1	<p>Practice Directions</p> <p>Delete from rule 18.1 the words: “operation of these rules”</p> <p>and replace with: “practice and procedure of the Commission”</p> <p>Amended rule 18.1 to read:</p> <p>18.1 Practice Directions</p> <p>The President, in consultation with the Deputy Presidents and the Registrar, may issue Practice Directions in relation to the practice and procedure of the Commission, and may from time to time rescind or amend any such Practice Direction.</p>
18.3(1) & (2).	<p>Interpreters</p> <p>Delete from subrule 18.3(1) the word: “accredited”</p> <p>and replace with: “certified”</p>

Delete from subrule 18.3(2) wherever the word appears:
"accredited"

and replace with:
"certified"

Amended subule to read 18.3 to read:

18.3 Interpreters

(1) Subject to subrule (2), only interpreters certified by the National Accreditation Authority for Translators and Interpreters (NAATI) may be used in proceedings before the Commission.

(2) In any proceedings before the Commission requiring interpreters in languages for which interpreters are yet to be certified by NAATI, or in circumstances where the Registrar determines it is otherwise necessary in view of the unavailability of NAATI-certified interpreters, the Registrar may approve an interpreter or interpreters for use in the proceedings.

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