



2002

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

Subordinate Law Number: SL2002-21

Workers Compensation Rules 2002

Explanatory Statement

Circulated by authority of

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Minister for Industrial Relations

Workers Compensation Rules 2002

Explanatory Memorandum

Overview

Section 217 of the *Workers Compensation Act 1951* provides for the Executive to make rules in relation to procedure for the Act. The Rules must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*.

The current *Workers' Compensation Rules* were made in 1938. They have been repealed and replaced by the *Workers Compensation Rules 2002*. The new rules reflect the changes in the recent amendments to the Workers Compensation Act and regulations.

Matters coming before the court will now come by way of application.

Where disputes arise the parties will be brought together early by the court at a Case Management Meeting where the court will encourage the parties to settle the matter. Should the parties fail to settle the matter at a Case Management Meeting, the court will ensure the prompt settlement of a dispute by arbitration.

Detail

PART 1 PRELIMINARY

The first 5 rules are formal requirements. They refer to the name of the rules, commencement date, terms used, notes and the application of the rules.

Rule 1 Name of Rules

Provides that the rules will be called the *Workers Compensation Rules 2002*.

Rule 2 Commencing Date

Provides that the rules will commence on the day after notification.

Rule 3 Dictionary

As part of the modernisation of the drafting style the previous definitions provided under the heading “Interpretation” have been moved to the end of the rules under the heading “Dictionary”.

Rule 4 Role of Notes in the Rules

Provides an explanation of the interpretation of notes used in the amending rules.

Rule 5 Application of Rules

This rule state that the rules will apply to arbitration of a claim under the Act.

PART 2 DOCUMENTS

This part deals with the form that documents should take when they are being filed with the Registrar and when the documents are deemed to be filed.

Rule 6 General Requirements for Documents

Provides an explanation as to what is required in a document before it is filed.

Rule 7 Filing of Documents

Provides an explanation as to how a document may be filed, how many copies of the document need to be made and what other material should accompany a document when it is filed.

Rule 8 Documents Filed When Accepted by Registrar

Provides when a document is filed by the Registrar, when the Registrar may refuse to file a document and how a person may seek a review of the Registrar’s decision not to file.

PART 3 REQUESTING ARBITRATION

This part provides that certain persons may request an application for arbitration. It deals with how the application may be served on a respondent and how an answer to an application may be provided by a respondent.

Rules 9, 10 and 11 Application for Arbitration

Provides that certain persons may ask that a claim be decided by arbitration by filing an application.

Rule 12 Injury Notice and Medical Reports

This rule prescribes that an injury notice and all available medical evidence must accompany an application for arbitration and if an injury notice was not provided, the reasons why it was not provided.

Rule 13 Copies

Prescribes the number of copies of an application that need to be provided.

Rules 14 Service of Application on Respondent

An applicant must serve an application on each respondent within 14 days after the application is filed, or within such other time as the court orders. The applicant must file an affidavit of service unless the respondent files an answer and if the court has ordered the application to be served a copy of the order must be served with the application.

Rule 15 Service of Application or Notice on Insurer

Provides that an employer who is a respondent to an application must serve a copy of an application on the insurer within 7 days after being served with an application and then file a certificate of service.

Rule 16 Answer to Application

Provides that a respondent may file an answer to an application. In any event, an answer must be filed within 28 days after the date the respondent was served with the application, or within any other time the Court orders. Should a respondent be included in an application at a later date an answer must be filed within 28 days after the respondent is included as a party or within the time ordered by the court. This rule also prescribes the copies that are required by the Registrar.

Rule 17 Service of Answer

Provides that a respondent must serve a copy of the answer on the applicant and each other respondent as soon as practicable and if an order was made a copy of the order must be served with the answer.

PART 4 SERVICE

Deals with how a document may be served.

Rules 18 Service on a Party Represented by a Lawyer and Substituted Service

Provide that a document may be served on a lawyer represented a party to an arbitration.

Rule 19 Substituted Service

Prescribes that if it is impracticable to serve a document the party may apply to the court for an order for substituted service. In deciding whether to make an order the court shall have regard to the steps taken, the likelihood of the person being made aware of the document by advertising or other means and the cost of serving the document.

PART 5 CASE MANAGEMENT

This part provides that a case management meeting is to be held for every application filed. It provides for the time a case management meeting must be held and the parties that are to attend the meeting. There are procedures prescribed for a claim that is likely to be settled and for a claim that is unlikely to be settled. It also prescribes how a settlement agreement is to be recorded.

Rule 20 Case Management Meeting

This rule prescribes that the court must hold a case management meeting for each application filed. The purpose of the meeting is to assess the likelihood of settling the claim and if the claim cannot be settled at that meeting directions are to be provided for arbitration.

Rule 21 Time for Case Management Meeting

Provides that if it is practicable the case management meeting should be held after the respondent's answer is filed and the medical evidence has been served by the parties. When an application is filed the Registrar must set a time and place for the meeting and inform each party in writing as to the time and place of the meeting. The Registrar may require the parties to file a certificate of readiness before setting a time for the meeting.

Rule 22 Attendance at Case Management Meeting

Prescribes that unless the court otherwise orders the injured worker, dependant or personal representative must attend the case management meeting and each other party must be represented at the meeting. A party who is represented must ensure the representative has the authority to negotiate a settlement or be able to obtain instructions quickly. The court can direct a party to attend the case management meeting

Rule 23 Parties Must Make a Genuine Effort to Settle

Provides that parties at a case management meeting must make a genuine effort to settle the claim and if the court is satisfied that a party did not make a genuine effort, the court is to take this into account when making an order for costs.

Rule 24 Settling of Claim Likely

Provides that the court must promote the settlement of the claim at a case management meeting and may adjourn the arbitration to encourage a settlement.

Rule 25 Settling of Claim Unlikely

Provides that if the court considers it unlikely that the parties will settle the claim at a case management meeting it must promote the settlement of the claim and may adjourn the arbitration to give the parties time to negotiate a settlement.

Rule 26 Case Management Meeting not to be Evidence

Prescribes that anything said or done at a case management meeting is not to be used as evidence if the claim proceeds to arbitration.

Rule 27 Recording of Settlement

This rule prescribes that if an agreement is reached at a case management meeting, the parties are to record the agreement in writing as required by the Registrar.

PART 6 PARTIES AND REPRESENTATION

This part prescribes the parties that may attend the court during an application for arbitration and when those parties may be represented by another person.

DIVISION 6.1 PARTIES

Rule 28 Necessary Parties

Prescribes that any person whose participation is necessary for the court to completely and finally decide a matter shall be a party to an application and the court may require a person to be included as a party. The rule also prescribes that each party other than an applicant is a respondent and that the court may decide a claim even if a person is incorrectly included or not included as a party.

Rule 29 Including Other Parties

Provides that a party to an application may include another party as a third party by naming that person in the application and a party may apply to the court to include another party. A party applying to include a person as a third party must serve a copy of the application on the person and on each other party to the arbitration. The Court may make orders to serve.

Rules 30 and 31 Persons may Apply to be Included or Removed

A party may apply to the court to be included or removed. A party to be removed must serve a copy of the application on each other party to the arbitration.

Rule 32 Employer Not a Respondent in Certain Applications

This rule is to apply if a dependant or the personal representative of a dead worker asks that a claim be decided by arbitration and the amount of compensation is not an issue. The employer will not be a respondent to the arbitration if the employer pays the money to the applicant or into the court for the court to deal with as it directs.

Rule 33 Party under Disability

Prescribes who a person under disability is and that the court may direct a child to be a party to an application.

DIVISION 6.2 REPRESENTATION

Rule 34 Party may be Represented

This rule makes provision for representation of a party. The rule also prescribes that a person other than a lawyer may claim travelling expenses for representing a party and the court may allow a worker or a member of the workers family who represents the worker to claim an allowance for time spent at the arbitration.

Rule 35 Act may be Done by Lawyer or Agent

Gives directions that an act to be done under the Rules may be done by a lawyer or if it can be lawfully done by an agent, it can be done by an agent.

Rule 36 Changes Between Acting in Person and by Lawyer

Provides that if a party acts in person in a proceeding and later appoints a lawyer the lawyer must within 2 days after the appointment tell the Registrar and the other party in writing. If a party acts by a lawyer and later decides to act in person, the party must within 2 days after making the decision tell the Registrar and the other party in writing.

Rule 37 Change of Lawyer

Provides that if a party acts by a lawyer and later appoints another lawyer, the newly appointed lawyer must inform the Registrar and the other party within 2 days of the appointment.

PART 7 CONDUCT OF ARBITRATION

This part provides how the date and time of arbitration may be set, when liability to a claim is admitted or denied and where the burden of proof lies.

Rule 38 Date of Arbitration

The Registrar must set the time for an arbitration in accordance with any directions of the court.

Rule 39 Liability and Particulars Subject to Answer

Subject to any answer by a respondent, liability to a claim by an injured worker or dependant is taken to be admitted and subject to an answer particulars set out in an application are taken to be admitted. Admission of liability or a particular is subject to an answer even if the answer is not filed within the time required. If a respondent worker does not file an answer particulars set out in an application are not admitted by the worker. If a respondent employer does not file an answer the court may allow the respondent to raise the matter or adjourn the arbitration to a time or for a period to allow the respondent to file an answer.

Rule 40 Burden of Proof on party Asserting Fact

Gives directions that the burden of proof of any fact that is not admitted is the same on all parties.

Rule 41 Directions About Third Party Respondents

A party may apply for directions with respect to procedure between the respondent and the third party respondent. The Court may give directions that it considers appropriate. Nothing in this rule affects an applicants claim against a respondent.

Rule 42 Directions and Orders if Remedy Against Employer and Stranger

This rule applies to an arbitration if the injury to a worker occurred in circumstances where there are remedies both against the employer and a stranger and where a respondent to an application claims that if compensation were to be paid to the applicant then the respondent would be entitled to be indemnified by the person. The respondent may file a notice of claim naming that person. The respondent must serve a copy of the notice on the person and the Court may give directions it considers appropriate. The person may dispute the notice and appear at the arbitration. If the

person does not appear at the arbitration the person is taken to admit the validity of the award of the court on the arbitration.

Rule 43 Procedure if no Provision Made

Provides that if a procedure is not provided for under these Rules the court may apply the *Magistrates Court (Civil Jurisdiction) Act 1982* and that this rule is subject to any direction of the court.

PART 8 MEDICAL REFEREE

This part prescribes how a medical referee may be appointed to assist the court, how the court may order a worker to undergo an assessment by a medical referee and that the court may decide on a claim without the assistance of a medical referee.

Rule 44 Party May Apply for Medical Referee

Provides that a party may apply to the court for a medical referee to help the court assess a medical matter or to report on a medical matter.

Rule 45 Notice of Request to Medical Referee

If a medical referee is requested the Registrar must advise each party in writing.

Rule 46 Assessment of Worker

Gives the court the authority to order a worker to undergo an assessment by a medical referee and provides that the Registrar must tell the parties in writing of the order.

Rule 47 Report to be Given to Parties

The medical referee's report prepared for arbitration must be provided to each party to the arbitration.

Rule 48 Court may Decide Claim without Medical Referee

Provides that the court may decide a claim without the assistance of a medical referee.

PART 9 SUBMISSION TO AWARD AND PAYMENT INTO COURT

This part provides that a respondent employer may pay a sum into the court as weekly payments or as a lump sum without admitting liability before arbitration. It prescribes that each party should be notified of the payment and how a worker or a dependant may accept the payment in satisfaction of a claim. This part prescribes a procedure for the payment on workers and dependants acceptance, no prompt acceptance of the payment into the court and what is to happen if the award is for a lesser amount than the payment.

Rule 49 Payment into Court General

Provides that the Registrar must inform all parties in writing when a party pays an amount into court as compensation.

Rule 50 Admission and Submission to Award or Payment – Injured Worker

Provides that a respondent employer may before the date set for arbitration, file notice of the admission of liability and submits to an award for the payment of weekly compensation. The employer may also admit liability for a lump sum amount of

compensation sufficient to cover the employer's liability and pay that amount into the court. This rule also provides that a respondent who files notice must serve a notice on each other party.

Rule 51 Admission and Submission to Payment – Dead Worker

Prescribes that a respondent employer may file a notice admitting liability and pay into court an amount sufficient to cover the liability before arbitration. The respondent employer must serve a notice on each other party to the arbitration.

Rule 52 Denial and Submission to Award or Payment

Gives an employer who is a party to an arbitration an opportunity to file or to submit to an award for the payment of weekly compensation without admitting liability before the date of arbitration. This rule also provides that an employer may pay an amount into the court sufficient to cover liability or an amount stated in the notice without admitting liability. An employer must notify each of the other parties to the arbitration.

Rule 53 Worker's Acceptance of Payment

This rule provides that a worker may accept an amount of compensation in satisfaction of the claim by giving notice to the employer and the Registrar. Notice must be given within reasonable time before the day set for the arbitration.

Rule 54 Dependant's Acceptance of Payment

Provides that a dependant or any respondent other than the employer may accept the amount of compensation in satisfaction of the claim by giving notice to the employer, Registrar and any other party.

Rule 55 Payment on Worker's Acceptance

Prescribes that the court may direct payment or the application of the amount for the workers' benefit. The court may also order the respondent to pay any costs of the worker before receipt of the notice or in relation to the notice of submission.

Rule 56 Payment on Dependant's Acceptance

This rule prescribes that if payment is accepted by a dependant and any other respondent proceedings are stayed and if the parties agree about the apportionment, the court may make an award. The court may also order the employer to pay any costs of the parties incurred before the receipt of or in relation to, the notice of submission or payment.

Rule 57 No Prompt Acceptance

Provides that if a party does not accept an amount of compensation within a reasonable time after the offer is made, the party may accept the amount before arbitration. However if the party accepts, the party is liable to pay the costs reasonably incurred by the employer after the day the employer filed notice or made the payment into court.

Rule 58 If Award is not Greater than Submission or Payment

Prescribes that if the award on arbitration is not greater than the amount submitted to or paid, the respondent employer is not liable to pay any cost other than they would

have to pay had the amount submitted or paid been accepted. The court may where the amount submitted was not accepted order costs to be set off or be deducted from any amount awarded. Where the amount was accepted or paid after receiving the notice by any other party the court may order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

PART 10 AWARDS AND REGISTERED AGREEMENTS

This part deals with the procedures for awards that are gained through arbitration by the court and when an agreement made outside the court is to be registered by the court.

DIVISION 10.1 AWARDS

This Division prescribes that an award must be prepared by the successful party and that the successful party must give a copy to each other party and the Registrar. The Registrar must serve a copy of the award on each party to the arbitration and the court may correct any clerical error in an award. The court may set aside or vary an award and make an order that is considered just. An application to set aside or vary an award may not be made more than 6 months after the date of the award without the leave of the court.

Rule 59 Award on Arbitration

An award of the court must be prepared by the successful party for issue by the court. The successful party must give a copy of the award to each other party to the arbitration and give the award to the Registrar for issue by the court within 7 days from the arbitration. The Registrar must serve a copy of the award on each party to the arbitration as soon as practicable after an award is issued and the court may correct a clerical error in an award at any time.

Rule 60 Setting Aside or Varying Award

Provides that the court may set aside or vary an award if it is satisfied that the award was obtained by fraud or other improper means or a person included in an award is not a dependent. The court may make an order that it considers just when setting aside an award and an application to set aside or vary an award may not be made more than 6 months after the date of the award without leave of the court.

DIVISION 10.2 REGISTERED AGREEMENTS

This division prescribes that a party to an agreement may apply for the agreement to be registered by filing a copy of the agreement. The agreement must be signed by all parties or their representatives and, if the agreement is registered, all parties to the agreement should be provided with a copy endorsed with the date of registration. The register must also provide a registered copy to a party who is not a party to the arbitration if it is applicable and the court or the Registrar may require additional information before registering the agreement.

Rule 61 Application for Registration of Agreement

A party to an agreement may apply for registration by filing a copy of the agreement. If the person is also a party to an arbitration about the agreement the parties may hand it to the court at the arbitration for registration and the agreement must be signed by the injured worker and the representative of each party. If the court registers the

agreement the Registrar must give a copy to all parties endorsed with the date of registration. The Registrar may also supply a copy of the registered agreement to any party to the arbitration who is not a party to the agreement.

Rule 62 Additional Information

Prescribes that the court or the Registrar may at any time require a part to provide additional information before registering an agreement.

Rule 63 Application for Amendment or Cancellation of Agreement

Provides that a party to an agreement may apply to the court to amend or cancel the agreement and the applicant must as soon as practicable give a copy of the application to each other party to the agreement.

DIVISION 10.3 ENFORCEMENT

This division provides that the *Magistrates Court (Civil procedures) Act 1982* will apply with any necessary changes to the enforcement of or recovery of any money due under an award or an agreement.

Rule 64 Enforcement of Awards and Agreements

Provides that the *Magistrates Court (Civil Procedures) Act 1982* applies with any necessary changes for the enforcement of, or recovery of moneys due under an award. The rule also provides that settlements reached outside the court process should be registered with the Registrar and subject to the same conditions as arbitration.

PART 11 APPEALS

This part provides that if the Supreme Court makes an order from a decision or award in arbitration the decision must be recorded as if it were a decision or award of the court. If the decision requires that an award be made by the court the court must make the award or if the judgment directs a re-hearing the court must set a time for the hearing and advise each party about the time for the hearing.

Rule 65 Order of Supreme Court on Appeal

This rule applies if an order is made by the Supreme Court on an appeal from a decision or award of the court in an arbitration. If the order has the effect of a decision or award, the decision or award must be recorded by the Registrar as if it were a decision or award of the court. If the order requires an award to be made in favour of a party the court must make that award. If the judgment directs a re-hearing or further hearing, the Registrar must set a time for the hearing as soon as practicable and advise each party about the time for the hearing. Generally the court must make any directions, decisions or award that is necessary to give effect to the order.

PART 12 RECORDS

This part determines that the Registrar must keep a record of each arbitration and that the Registrar must keep a register of arbitration called a special register and what is to be contained in the special register.

Rule 66 Registrar Must Keep Records

The Registrar must record each arbitration in the same way as other court proceedings are recorded.

Rule 67 Special Register

This rule prescribes that the Registrar must keep a Register of Arbitrations and that it be called the Special Register. A person may apply to the court to correct an entry in, or remove an entry from the special register but may not do so for an amendment or cancellation of a registered agreement.

PART 13 COSTS

This part prescribes that, subject to any direction of the court, the *Supreme Court Rules* apply with any necessary changes to taxation of costs of an arbitration or related proceedings. A party may apply to the court for a review of a taxation and the court may make any order it considers appropriate in relation to the costs of the review.

Rule 68 Costs Between Third Party Respondents and Other Parties

The court may make any order or direction in relation to costs between these parties.

Rule 69 Taxation of Costs

Provides that, subject to any direction of the court, if the costs of an arbitration or related proceedings are to be taxed, the *Supreme Court Rules* apply with any necessary changes.

Rule 70 Review of Taxation

A party may apply to the court, in writing for a review of a taxation of costs and the court may make any order it considers appropriate to the costs.

PART 14 MISCELLANEOUS

Rule 71 Transitional

The previous rules as defined apply to injuries to which the previous Act as defined applies and this rule will expire 2 years after its commencement.

Schedule 1 & Dictionary

Schedule 1 to the rules is a sample document heading.

The dictionary defines particular words used by the rules.