



Workers Compensation
Commission

e-Bulletin No. 75

January 2018

President's Welcome

Welcome to e-Bulletin No. 75 of the Workers Compensation Commission.

This bulletin outlines:

Amendments to the Workers Compensation Commission Rules 2011

On 29 January 2018, the Hon. Victor Dominello MP, Minister for Finance, Services and Property, approved amendments to the Workers Compensation Commission Rules 2011.

The amendments are to improve procedures to be followed in proceedings before the Commission.

A schedule of the amendments is attached to this e-Bulletin.

The rule amendments will apply from 29 January 2018.

A handwritten signature in blue ink, appearing to read 'Greg Keating'.

Judge Greg Keating
President

Schedule to e-Bulletin No. 75, January 2018

Rule/ Part	Comment/rationale	Original	New
3.2	<p>Extension and abridgement of time</p> <p>There is a conflict between rules 3.2 and 16.2(12) of the 2011 Rules, in respect of how an application to extend time for the making of an appeal under section 352(4) of the 1998 Act should be made and who can make the order to extend time. This conflict arose recently when an application was made under rule 3.2, instead of rule 16.2(12), to extend time for the making of an appeal.</p> <p>Rule 3.2 has been amended to clarify this conflict and to remove ambiguity as to how such an application to extend time for the making of an appeal should be made.</p>	<p>(1) The Commission may by order extend or abridge any time fixed by these rules or under Part 9 of Chapter 7 of the 1998 Act.</p>	<p>Replace with:</p> <p>(1) The Commission may by order extend or abridge any time fixed by these rules or under Part 9 of Chapter 7 of the 1998 Act, except the extension of time fixed under section 352(4) of the 1998 Act, which must be made under rule 16.2(12).</p>
8.2	<p>Change of address for SIRA matters</p> <p>SIRA has a changed address for service.</p> <p>Note SIRA has removed its DX address. SIRA contact forms no longer provide for a DX mailing address.</p>	<p>(1) Where these rules require service on the Authority, that service is to be effected at the office of the Authority at:</p> <p>Claims Branch, State Insurance Regulatory Authority 92-100 Donnison Street Gosford 2250</p> <p>(2) Service of a document may be effected</p>	<p>Replace with:</p> <p>(1) Where these rules require service on the Authority, that service is to be effected at the office of the Authority at:</p> <p>Executive Office - Workers & Home Building Compensation Regulation, State Insurance Regulatory Authority, 92-100 Donnison Street Gosford NSW 2250</p> <p>(2) Service of a document may be effected at</p>

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		<p>at the office of the Authority:</p> <p>(a) by hand, by delivering it to the address set out in subrule (1), or</p> <p>(b) by post, by sending it by prepaid post to:</p> <p>Claims Branch State Insurance Regulatory Authority Locked Bag 2906 Lisarow NSW 2252, or</p> <p>(c) by DX, by leaving it in the DX box at DX 731, Phillip Street Sydney or in another DX box for transmission to that DX box.</p>	<p>the office of the Authority:</p> <p>(a) by hand, by delivering it to the address set out in subrule (1), or</p> <p>(b) by post, by sending it by prepaid post to:</p> <p>Executive Office - Workers & Home Building Compensation Regulation, State Insurance Regulatory Authority Locked Bag 2906 Lisarow NSW 2252.</p>
10.3(1)	<p>Evidence of witness</p> <p>Rule 10.3(1) makes it mandatory for an applicant worker to attach a statement to an Application to Resolve a Dispute.</p> <p>The mandatory requirement is extended to a party who wishes to rely on oral evidence of any other person.</p> <p>Currently rule 14.2 addresses the calling of witnesses. However, the amendment to rule 10.3 will provide further clarification of the obligation</p>	Nil	<p>Insert new 10.3(1)(b). Renumber 10.3(1)(b) to (c):</p> <p>10.3(1)</p> <p>...</p> <p>(b) Where a party proposes to rely on the oral evidence of a witness, the party must lodge and serve a document containing:</p> <p>(i) the name of the witness, and</p> <p>(ii) a written statement of the evidence</p>

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	and for parties to lodge the requisite information at the outset of proceedings.		to be given by the witness and signed by the witness; and
10.3(1)	<p>Schedule of payments</p> <p>Rule 10.3(1) has been amended to require the respondent to lodge a schedule of all payments of weekly compensation made to the applicant. The insurer is in the best position to provide this information.</p> <p>In addition, due to the insertion of new rule 10.3(1)(b), this rule will be renumbered to (c).</p>	(b) where the proceedings include a claim for weekly payments of compensation, a schedule of all weekly payments of compensation paid including the amounts and periods.	<p>Replace with:</p> <p>(c) where the proceedings include a claim for weekly payments of compensation, the employer must provide a schedule of all weekly payments of compensation paid including the amounts and periods.</p>
10.3(1)	For the avoidance of doubt, the new rule 10.3(1) is stated opposite.	<p>(1) For the purposes of section 290 of the 1998 Act, a party to proceedings must lodge and serve, with the dispute application or reply, all information and documents on which the party proposes to rely and that are in the possession or control of the party, and that have not been lodged by a party in the current proceedings and:</p> <p>(a) where the proceedings are commenced by a worker, a written statement of the evidence to be given by the worker, signed by the worker; and</p> <p>(b) where the proceedings include a</p>	<p>(1) For the purposes of section 290 of the 1998 Act, a party to proceedings must lodge and serve, with the dispute application or reply, all information and documents on which the party proposes to rely and that are in the possession or control of the party, and that have not been lodged by a party in the current proceedings and:</p> <p>(a) where the proceedings are commenced by a worker, a written statement of the evidence to be given by the worker, signed by the worker; and</p> <p>(b) Where a party proposes to rely on the oral evidence of a witness, the party</p>

Rule/ Part	Comment/rationale	Original	New
		<p>claim for weekly payments of compensation, a schedule of all weekly payments of compensation paid including the amounts and periods.</p>	<p>must lodge and serve a document containing:</p> <p>(i) the name of the witness, and</p> <p>(ii) a written statement of the evidence to be given by the witness, signed by the witness; and</p> <p>(c) where the proceedings include a claim for weekly payments of compensation, the employer must provide a schedule of all weekly payments of compensation paid including the amounts and periods.</p>
16.2	<p>Presidential appeals and the powers of the Registrar</p> <p><i>In Ky v Blue Leaf Food Group Pty Ltd [2016] NSWCCPD 55</i> an issue arose as to the time to appeal under section 352(4) of the 1998 Act. Ambiguity arose as to the date of lodgement of the appeal following procedural directions issued by the Registrar.</p> <p>Rule 16.2(3) has been amended to make it clear that the application to appeal is registered when first received at the Registry, and the Registrar may issue directions to rectify procedural deficiencies as an alternative to rejecting the appeal application. This is particularly important given the</p>	<p>(3) If the Registrar determines that he or she is not satisfied that the requirements of section 352 of the 1998 Act, or any applicable rules and regulations, as to the making of the appeal have been complied with, the Registrar is to return the application to the party who lodged it, with a statement particularising the non-compliance.</p>	<p>Replace with:</p> <p>(3) 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>

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	strict time limits to appeal.		
17.7	<p>Defective pre-filing statements</p> <p>Rule 17.7 has been amended to allow either party to bring a dispute to the Registrar about whether a pre-filing statement is defective to the Registrar. Previously only the claimant could raise a dispute.</p>	<p>17.7 Defective pre-filing statement</p> <p>(1) Where a defendant has served notification in accordance with section 317(1) of the 1998 Act, the claimant may dispute that the pre-filing statement is defective and may refer the dispute to the Registrar for determination.</p> <p>(2) Where a dispute is referred to the Registrar in accordance with subrule (1), a claimant must lodge with an application the following:</p> <p>(a) a copy of the pre-filing statement, and</p> <p>(b) a copy of the defendant’s notification, and</p> <p>(c) submissions detailing the extent to which the claimant disputes the alleged defects.</p> <p>(3) Where a claimant requests in accordance with this rule that a dispute be referred to the Registrar for determination under section 317 (2) of</p>	<p>17.7 Defective pre-filing statement</p> <p>(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:</p> <p>(a) a copy of the pre-filing statement, and</p> <p>(b) a copy of the defendant’s notification issued under section 317(1) of the 1998 Act, and</p> <p>(c) submissions detailing the extent to which the pre-filing statement is disputed.</p> <p>(2) 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</p>

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		<p>the 1998 Act, and lodges a certificate of service of the request on the defendant within 7 days of that service, the dispute is so referred.</p> <p>(4) A defendant may lodge submissions in reply to a claimant’s application, within 14 days of being served with the request.</p> <p>(5) Where a dispute is referred for determination in accordance with subrule (3), the Registrar may:</p> <p>(a) give a direction to the claimant as to the action necessary to cure any defect in the pre-filing statement served by the claimant, within a prescribed time, or</p> <p>(b) determine that the pre-filing statement served by the claimant is not defective.</p> <p>(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:</p>	<p>employer’s insurer,</p> <p>within 7 days after the Registrar registers the application.</p> <p>(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.</p> <p>(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 parties 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</p>

Rule/ Part	Comment/rationale	Original	New
		<p>(a) the pre-filing statement is taken to have been served, and</p> <p>(b) the defendant is taken to have waived any allegation in the notification that the pre-filing statement is defective.</p>	<p>served by the claimant is not defective.</p> <p>(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:</p> <p>(a) the pre-filing statement is taken to have been served, and</p> <p>(b) the defendant is taken to have waived any allegation in the notification that the pre-filing statement is defective.</p>