



# District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 2 December 2003.

A Liounis

Secretary of the Rule Committee

## **Explanatory note**

The object of this Rule is to amend the *District Court Rules 1973* to prescribe procedures for coal miners' workers compensation claims and special statutory compensation claims to be dealt with by the District Court pursuant to section 7 of the *Compensation Court Repeal Act 2002*.

**2003 No 963**

Clause 1 District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003

---

**District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003**

under the

District Court Act 1973

**1 Name of Rule**

This Rule is the *District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003*.

**2 Commencement**

This Rule commences on 1 January 2004.

**3 Amendment of District Court Rules 1973**

The *District Court Rules 1973* are amended as set out in Schedule 1.

---

## Schedule 1 Amendments

(Clause 3)

### [1] Part 1, rule 4 (1)

In alphabetical order, insert:

***coal miner*** means a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

***coal miner's claim*** means a claim for compensation pursuant to the Workers Compensation Acts in respect of any injury received by a coal miner.

***compensation*** includes any monetary benefit under the Workers Compensation Acts or a Special Statutory Compensation Act.

***conciliator*** means a District Court conciliator being an officer or employee of the Court nominated by the registrar to carry out conciliation in connection with a coal miner's claim.

***Special Statutory Compensation Act*** means the *Police Act 1990*, the *Police Regulation (Superannuation) Act 1906*, the *Sporting Injuries Insurance Act 1978*, the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, and the *Workers' Compensation (Dust Diseases) Act 1942*.

***special statutory compensation claim*** means a claim for compensation pursuant to a Special Statutory Compensation Act.

***WorkCover Authority*** means the WorkCover Authority constituted under the *Workplace Injury Management and Workers Compensation Act 1998*.

***Workers Compensation Acts*** means the *Workers' Compensation Act 1926*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003

Schedule 1 Amendments

---

**[2] Part 5**

After rule 6B, insert:

**6C Coal miners' claims**

Subject to these rules, in any proceedings in respect of a coal miner's claim the plaintiff shall file a statement of claim in the approved form and the proceedings shall be entered in the Coal Miners' Workers Compensation List in accordance with Part 24D.

**6D Special statutory compensation claims**

Subject to these rules, in any proceedings in respect of a special statutory compensation claim the plaintiff shall file a statement of claim in the approved form and the action shall be entered in the Special Statutory Compensation List in accordance with Part 24F.

**Division 2A Proceedings commenced by summons**

**6E Application and procedure**

- (1) This Division applies to proceedings commenced by summons.
- (2) For the purposes of Division 1 of Part 5, a summons is an originating process.
- (3) The procedure for the hearing and disposal of a summons shall be as near as practicable to that applicable to the hearing and disposal of a notice of motion in accordance with the provisions of Part 16.

**6F Particular proceedings commenced by summons**

The following proceedings shall be commenced by summons:  
proceedings set out in Part 24D rule 5.

**[3] Part 5**

After rule 15, insert:

**Division 8      Actions transferred from the Compensation  
Court**

**16      Actions transferred from the Compensation Court**

- (1) Proceedings under the Workers Compensation Acts, in respect of a coal miner matter within the meaning of those Acts, instituted in the Compensation Court and pending in that Court as at midnight on 31 December 2003 will transfer to the District Court in accordance with section 7 (1) (a) of the *Compensation Court Repeal Act 2002* and will be placed in the Coal Miners' Workers Compensation List.
- (2) Applications under section 122 of the *Workplace Injury Management and Workers Compensation Act 1998* instituted in the Compensation Court and pending in that Court as at midnight on 31 December 2003 will transfer to the District Court in accordance with section 7 (1) (a) of the *Compensation Court Repeal Act 2002* and will be dealt with pursuant to Part 24E.
- (3) Proceedings under a Special Statutory Compensation Act instituted in the Compensation Court and pending in that Court as at midnight on 31 December 2003 will transfer to the District Court in accordance with section 7 (1) (a) of the *Compensation Court Repeal Act 2002* and will be placed in the Special Statutory Compensation List.

**[4] Parts 24D–24F**

After Part 24C, insert:

**Part 24D      Coal Miners' Workers Compensation List**

**Division 1      Proceedings generally**

**1      Actions under the Workers Compensation Acts**

- (1) In this Part:  
*action under the Acts* means proceedings commenced under the 1926 Act, the 1987 Act and the 1998 Act.

*List* means the Coal Miners' Workers Compensation List.

*the 1926 Act* means the *Workers' Compensation Act 1926*.

*the 1987 Act* means the *Workers Compensation Act 1987*.

*the 1998 Act* means the *Workplace Injury Management and Workers Compensation Act 1998*.

- (2) This Division applies to an action under the Acts whether commenced in this Court or transferred from the Compensation Court.
- (3) Where there is an inconsistency in the operation of these rules and the provisions of this Division, the provisions of this Division shall apply.

## **2 Coal Miners' Workers Compensation List**

- (1) The registrar for Sydney and the registrar for Newcastle shall each maintain a Coal Miners' Workers Compensation List and shall enter in that List any action under the Acts as soon as the action is commenced or transferred.
- (2) The statement of claim in an action under the Acts shall bear in the heading the words "Coal Miners' Workers Compensation List", and shall be in the approved form.
- (3) A summons in an action under the Acts shall bear in the heading the words "Coal Miners' Workers Compensation List", and shall be in the approved form.
- (4) If a statement of claim or a summons in an action under the Acts is lodged with a registrar for a proclaimed place other than Sydney or Newcastle, the registrar at that other place shall forward the statement of claim or summons to the registrar for Sydney or Newcastle, whichever appears the most expedient, for filing and entry in the List maintained by that registrar.
- (5) An action under the Acts, and any proceedings ancillary to such action, may be set down for hearing at any proper place.

## **3 Functions of the registrar**

A conciliator has and may exercise all the functions of the registrar for Sydney in respect of proceedings in the Coal Miners' Workers Compensation List.

---

**4 Compliance with statutory restrictions on commencement of proceedings under the 1998 Act**

- (1) This rule is made pursuant to section 104 of the 1998 Act.
- (2) This rule applies to claims for compensation referred to in sections 101, 102 and 103 of the 1998 Act, as modified by clauses 235, 236 and 237 respectively of the *Workers Compensation Regulation 2003*.
- (3) A party seeking to commence any proceedings in respect of any such claim shall file with the initiating process a certificate of compliance in the form stipulated by subrule (5) certifying that the commencement of such proceedings is not contrary to the provisions of section 101, 102 or 103 of the 1998 Act, as modified by clauses 235, 236 and 237 respectively of the *Workers Compensation Regulation 2003*, as the case may be.
- (4) Any initiating process not accompanied by such appropriate certificate shall not be accepted for filing.
- (5) Such certificate of compliance shall be in or to the effect of the approved form or such portion or portions thereof as may be relevant to the particular matter.
- (6) Where, leave of the Court having been previously obtained, a party seeks to file an amended statement of claim adding an additional party or parties to the current proceedings then the provisions of this rule apply with all necessary modifications in respect of the proposed application against such added party or parties.

**5 Particular proceedings commenced by summons**

- (1) The following proceedings shall be commenced by summons where no proceedings have been commenced in relation to the subject matter in dispute:
  - (a) for an order for costs pursuant to section 112 of the 1998 Act,
  - (b) for an order for refund of weekly payments pursuant to section 58 of the 1987 Act,
  - (c) for apportionment between dependants pursuant to section 29 of the 1987 Act or for variation of any previous apportionment pursuant to section 30 of the 1987 Act,

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (d) where liability has been admitted, for an order for payment in respect of dependent children pursuant to section 31 of the 1987 Act,
  - (e) for variation in the manner in which the Public Trustee invests, applies, pays out or otherwise deals with money paid to the Public Trustee pursuant to section 85 of the 1987 Act. The Public Trustee shall be made a respondent to any such application,
  - (f) for any order, direction or authorization in respect of the payment of compensation pursuant to sections 83, 85, and 85A of the 1987 Act,
  - (g) for suspension of a weekly payment, or for a declaration that a worker's right to take or prosecute any proceedings under the 1998 Act has been suspended, until, pursuant to section 120 of that Act, the worker submits to medical examination,
  - (h) for an order under section 53 of the 1987 Act,
  - (i) for an order in respect of an objection to a reference to a medical referee or medical panel pursuant to Part 24E,
  - (j) for a determination under section 224 (1) or 225 (3) of the 1998 Act, as saved by clause 3 (1) of Part 18 of Schedule 6 to the 1987 Act, in respect of the Uninsured Liability and Indemnity Scheme.
- (2) Where proceedings are pending in relation to the subject matter of any application referred to in subrule (1), such application shall be made by notice of motion under Part 16 in the proceedings.

**6 Affidavits in support of summons under section 53 of the 1987 Act**

- (1) A summons for an order pursuant to rule 5 (1) (h) shall be supported by affidavits by the worker and a medical practitioner who has examined the worker.
- (2) The affidavits referred to 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.

**7 Applications for contribution, indemnity or apportionment**

- (1) The following applications shall be made by notice of motion under Part 16 where proceedings are pending in relation to the subject matter of the application:
  - (a) for contribution subject to section 15, 16 or 17 of the 1987 Act,
  - (b) for indemnification pursuant to section 20 of the 1987 Act,
  - (c) for apportionment pursuant to section 22 or 22A of the 1987 Act,
  - (d) for a determination pursuant to section 22B of the 1987 Act.
- (2) Where there are no proceedings in relation to the subject matter of an application under subrule (1), proceedings shall be commenced by statement of claim.

**8 Application for further medical expenses etc**

Where a worker who has commenced proceedings for compensation seeks to apply for a direction under section 62 (6A) of the 1987 Act he may so apply by notice of motion under Part 16 in the proceedings.

**9 Application for suspension of weekly payment**

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 1998 Act, has been suspended, until, pursuant to section 120 of that Act, the worker submits to medical examination may be made, where proceedings have been commenced in respect of the subject matter to which the weekly payment relates, by notice of motion under Part 16.

**10 Uninsured Liability and Indemnity Scheme**

- (1) The WorkCover Authority shall be a necessary party to any application under section 224 (1) or 225 (3) of the 1998 Act, as saved by clause 3 (1) of Part 18 of Schedule 6 to the 1987 Act.
- (2) 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 made by notice of motion under Part 16 in the proceedings.

**11 Applications in the case of death of worker**

- (1) In proceedings for the benefit of dependants in the case of the death of a worker pursuant to the 1987 Act and the 1998 Act, the following persons shall be joined as defendants:
  - (a) the personal representative (if any) of the worker, if that personal representative is not already an applicant,
  - (b) if the proceedings are brought by or on behalf of some only of the dependants, the other dependants,
  - (c) any other person claiming to be a dependant.
- (2) Where an injured worker dies leaving no dependants, proceedings to recover reasonable burial or cremation expenses pursuant to section 27 of the 1987 Act 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.
- (3) In proceedings brought under subrule (2) (b):
  - (a) the personal representative (if any) of the worker, and any person referred to in subrule (2) (b) who has not been joined as an applicant, shall be joined as a defendant,
  - (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.

**12 Service on insurer**

Where any insurer of a defendant is named in an originating process, a copy of that originating process shall be served on any such insurer as well as on the defendant.

**13 Service on WorkCover Authority**

Service on the WorkCover Authority may be effected by delivering a copy to an officer of the Authority at Legal Group, WorkCover, Level 1, 60-70 Elizabeth Street, Sydney, or by sending a copy by post addressed to the Authority, at GPO Box 2677 Sydney NSW 2001, 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.

**14 Submission to award**

- (1) This rule applies without limiting the generality of Part 15 rule 3.
- (2) An employer who is a party to proceedings for an award of compensation or for determination of any question as to the employer's liability to pay compensation may, at any stage of the proceedings, and whether or not the employer admits any liability to pay compensation, file and serve a notice stating that the employer 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, her 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) the proceedings shall be continued as though the notice under subrule (2) had not been filed.

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory  
Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (5) If proceedings are continued under subrule (4), before the record of the proceedings is brought before the Court for any hearing of the proceedings, the registrar shall seal within the record the notice filed under subrule (2) and any information contained in the record in respect of that notice, but the Court need not disqualify itself from hearing the proceedings only because it becomes aware in any manner of the notice or of any such information.

**15 Offer of compromise**

The provisions of Part 19A do not have application to proceedings entered in the Coal Miners' Workers Compensation List.

**16 Schedule of earnings**

In any statement of claim 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:

- (a) the plaintiff shall file and serve on each other party not later than 10 days before conciliation of a coal miner's claim or, where there is no conciliation, 21 days before the hearing date, a schedule containing full particulars of such earnings during such period,
- (b) if any party disputes the accuracy of any matter in the schedule that party shall, not later than 7 days after service of the schedule or 28 days after expiry of the time prescribed for filing a statement of defence pursuant to Part 10 rule 1 (1), whichever is the later, file and serve a schedule containing its allegations of such earnings,
- (c) a matter not so disputed shall be deemed to be admitted.

**17 Proceedings deemed dismissed**

- (1) Where in respect of any proceedings on a claim for compensation:
  - (a) a defendant has not filed a notice of appearance or notice of defence, and

(b) the plaintiff has not filed an affidavit of service of the originating process on that defendant,

within 3 months after the date of commencement of the proceedings, the proceedings as against that defendant are deemed to have been dismissed, and no further step may be taken in those proceedings other than an application mentioned in subrule (3) until the proceedings have been restored to the list.

- (2) Where proceedings which have not been heard, part heard or discontinued, and in which a preliminary advice of hearing or notice of call-over has been issued, have not been before the Court during any period of 6 months, the proceedings are, unless the Court otherwise orders, deemed to have been dismissed.
- (3) The Court may, on application by a party and on terms, restore to the list any proceedings deemed to have been dismissed under subrules (1) and (2).

#### **18 Dismissal of proceedings**

- (1) The Court may if it thinks fit dismiss any proceedings at any time on terms and without affecting the generality of the foregoing provisions of this rule, the Court may dismiss any proceedings if:
- (a) no party appears, or
  - (b) a defendant does, but the plaintiff does not, appear.
- (2) Where proceedings are dismissed 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 and the priority of the hearing of the proceedings as the Court thinks fit.
- (3) Subrule (2) applies except where otherwise provided in section 112 of the 1998 Act.

#### **19 Medical examination**

- (1) Except by leave of the Court, which may be given on terms, or consent of the worker, a notice shall not be given under Part 23 rule 2 (1) requesting that a worker submit to examination:

- (a) by a medical expert specializing 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 specializing 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.
- (2) An examination to which the worker submits himself for the purposes of section 119 of the 1998 Act is not an examination by a medical expert for the purposes of subrule (1).

**20 Expert evidence and hospital reports**

- (1) In this rule *expert's report* and *hospital report* have the same meaning as in Part 28, rule 8 and *party* includes any person who has filed a notice of appearance or notice of grounds of defence.
- (2) This rule applies in respect of any proceedings subject to the *Evidence Act 1995*, the Workers Compensation Acts and any regulations made thereunder and to any orders of the Court or agreement between the parties not inconsistent with such Acts or regulations.
- (3) Primary expert's reports must be served by each party in any proceedings prior to conciliation and any reports in reply or refresher reports must be served not later than 28 days before the hearing.
- (4) Where an expert's report is served in accordance with subrule (3), or an order is made under subrule (2), the report is admissible, without further evidence, oral or otherwise, as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact.
- (5) Except where otherwise provided in the Workers Compensation Acts, and unless the Court otherwise orders, a party may require the attendance for cross examination of the expert.
- (6) A party who requires the attendance of a person under subrule (5) shall procure that attendance, and, whether the party procures the attendance by the issue and service of a subpoena

---

or otherwise, the person shall not thereby become the party's witness except for the purpose of determining any liability for conduct money or witness' expenses.

- (7) A party who requires the attendance of a person as mentioned in subrule (6) shall as soon as practicable inform all other parties to the proceedings that he has done so.
- (8) Where a person who has made a report is cross-examined, the party tendering the report may re-examine that person.
- (9) Where a hospital report is served in accordance with subrule (3) or an order is made under subrule (2), the report is admissible.
- (10) In reckoning the period of 28 days referred to in subrule (3):
  - (a) any day on which the matter is listed for hearing shall not be counted, and
  - (b) where the hearing is not on consecutive days, any period of less than 28 days between hearing days shall not be counted.
- (11) Where a party has been served with an expert's report or a hospital report by another party and the first party seeks to rely on such report, it shall not be necessary to serve a copy of that report on the party who served it but the first party shall give notice of intention to rely on the report to the party who served it and to each other party in the proceedings, within the time prescribed by subrule (3).

## 21 Subpoenas

For the purposes of the operation of this Part of these rules the provisions of Part 29 are modified as follows:

- (a) the provisions of rules 6A and 6C apply to a subpoena issued out of each proclaimed place,
- (b) the provisions of rule 6A (4) apply subject to section 112 of the 1998 Act.

## 22 Discontinuance

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

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory  
Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (a) if no preliminary advice of hearing has been issued in the proceedings—without leave of the Court or consent of any other party, or
  - (b) after a preliminary advice of hearing has been issued in 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 16.

**23 Settling of awards**

- (1) Where the Court gives a decision or makes a final order disposing of any proceedings in the Coal Miners' Workers Compensation List, the registrar shall as soon as convenient prepare and settle a form of award engrossing the decision or order.
- (2) The registrar shall sign and seal any form of award settled by the registrar, and as soon as practicable cause a copy to be forwarded to each party, and any insurer of a respondent, to the proceedings.

**Division 2 Conciliation of coal miners' claims****24 Referral**

The registrar shall, not later than 3 months after the filing of a statement of claim in respect of a coal miner's claim, or at such earlier time as the parties may request, refer the matter to a conciliator for conciliation.

**25 General powers of a conciliator**

- (1) Without limiting the powers of a conciliator pursuant to Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act, a conciliator may:
  - (a) make a recommendation to parties prior to conciliation,
  - (b) determine whether to hold a conference or return the matter to the registrar,



- (c) direct the production of any document by any party to proceedings,
  - (d) generally control any proceedings before the conciliator, and
  - (e) do such other things as the rules specifically provide or the Court otherwise directs.
- (2) The conciliator may, if the conciliator thinks fit, on terms dispense with compliance with any of the requirements of the rules under this Part, either before or after the occasion for the compliance arises.

## **26 Directions**

Without limiting the powers of a conciliator to give directions, a conciliator may give directions relating to preparation for and the conduct of the conciliation conference including:

- (a) a direction to a party to provide any other party or the conciliator with further particulars of any allegation or claim made in the proceedings,
- (b) a direction to a party to lodge further documents with the conciliator,
- (c) a direction to a party to make available to any other party a copy of a specified document (not being a document that is privileged from production), and
- (d) a direction revoking or varying any direction made at a conciliation conference.

## **27 Conciliation conference procedure**

- (1) Unless the conciliator otherwise directs, a conciliation conference shall be attended by:
- (a) subject to paragraph (b), each party or, where a party is a company, an officer of the company having authority to settle the proceedings, or
  - (b) if the conduct of the proceedings by a party is controlled by an insurer, an officer of the insurer having authority to settle the proceedings.
- (2) A party may be accompanied at the conciliation conference by a barrister or solicitor retained by or on behalf of the party.

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory  
Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (3) A conciliator may from time to time adjourn the conciliation of a dispute which the conciliator has commenced to conduct.
- (4) A conciliator must not adjourn a matter beyond 35 days from the date of first notification of the conciliation conference, except with the consent of the parties.
- (5) A matter shall not be adjourned beyond 90 days from the date of first notification of the conciliation conference except by leave of the Court.

**28 Conduct of a conciliation conference**

A conciliation conference shall be conducted:

- (a) following reasonable notice to the parties, and
- (b) as a structured process in which the conciliator endeavours to assist the parties to:
  - (i) communicate effectively with each other about the issues in dispute,
  - (ii) narrow the issues in dispute and obtain appropriate concessions,
  - (iii) reach a settlement of the matter, and
  - (iv) record details of any settlement.

**29 Confidentiality**

Evidence of anything said or of any admission made in a conciliation conference is not admissible in any proceedings before the Court except:

- (a) with the consent of the parties,
- (b) where the evidence is referred to in a conciliation certificate but only to the extent so referred, and
- (c) where the evidence is relevant to an issue as to costs.

**30 Dismissal of proceedings**

- (1) The conciliator may, if the conciliator thinks fit, dismiss any proceedings if:
  - (a) no party appears, or
  - (b) a defendant does, but the plaintiff does not, appear.

- (2) The conciliator or the Court may, on application by a party and on terms, restore any proceedings dismissed under subrule (1).

### **31 Conciliation notifications**

- (1) The conciliator is taken to have notified the parties that a dispute has been referred to conciliation when the conciliator issues a notice of listing of the conciliation conference.
- (2) The conciliator shall, within 7 days of the conclusion of the conciliation conference, advise the registrar of the fact that the conciliation conference has been concluded but not of the details thereof.
- (3) A conciliator must, within a reasonable time after the conciliation conference, issue a conciliation certificate under section 84 of the 1998 Act.

### **32 Guidelines**

Except to the extent of any inconsistency with these rules, or unless the Court otherwise orders, the parties shall comply with the requirements of any Conciliation Guidelines issued by the Chief Judge.

## **Part 24E Medical panel procedures**

### **1 Definitions**

In this Part:

*the 1987 Act* means the *Workers Compensation Act 1987*.

*the 1998 Act* means the *Workplace Injury Management and Workers Compensation Act 1998*.

### **2 Application for reference**

- (1) An application for reference to a medical referee or medical panel pursuant to section 122 of the 1998 Act shall be lodged with the registrar together with sufficient copies for every respondent to the application.
- (2) The registrar shall endorse on or attach to the application and on sufficient copies of the application a notice containing the following matter:

**2003 No 963**

District Court Amendment (Coal Miners' and Special Statutory  
Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (a) where any respondent to the application objects to the reference applied for that respondent may, within 21 days from the date of the notice, request that the application be listed before the registrar for argument and determination,
  - (b) any such request shall be made in accordance with Part 24D rule 5 (1) (i), and
  - (c) that, in certain circumstances, a certificate or determination of a medical referee or medical panel may be conclusive evidence of the worker's condition, and shall send a copy of the application so endorsed to every respondent to the application.
- (3) In the application of section 122 of the 1998 Act for the purposes of section 122 (12) of that Act, section 122 (2) of that Act shall be construed as requiring any application to be made jointly by the worker and the employer.

**3 Order for report**

Where an order is made by the Court or a conciliator referring a matter to a medical referee or medical panel for report pursuant to section 124 of the 1998 Act, the registrar shall, as soon as practicable, refer all relevant court papers and supporting material to the medical referee or medical panel for a report to be furnished in accordance with the terms of reference.

**4 Reports for medical panels**

Additional medical reports in respect of applications under section 122 of the 1998 Act shall be filed not later than 7 days prior to the date set for the medical examination.

**5 Certificate**

- (1) A certificate given under section 122 (5) of the 1998 Act shall be in or to the effect of the approved form.
- (2) The registrar shall as soon as practicable after receiving a certificate furnish a copy to each party to the application.

---

## Part 24F Special Statutory Compensation List

### 1 Actions under the Special Statutory Compensation Act

- (1) In this Part:

*action* includes appeal and application.

*action under the Acts* means proceedings under the:

- (a) *Police Regulation (Superannuation) Act 1906*, section 21,
- (b) *Police Act 1990*, section 216A,
- (c) *Sporting Injuries Insurance Act 1978*, section 29,
- (d) *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, sections 16 and 30, or
- (e) *Workers' Compensation (Dust Diseases) Act 1942*, section 8I.

*List* means the Special Statutory Compensation List.

- (2) This Part applies to an action under the Acts whether commenced in this Court or transferred from the Compensation Court.
- (3) Where there is an inconsistency in the operation of these rules and the provisions of this Part, the provisions of this Part shall apply.

### 2 Special Statutory Compensation List

- (1) The registrar for Sydney shall maintain a Special Statutory Compensation List and shall enter into that List any action under the Acts as soon as the action is commenced or transferred.
- (2) The statement of claim in an action under the Acts shall bear in the heading the words "Special Statutory Compensation List", and shall be in the approved form.
- (3) If a statement of claim in an action under the Acts is lodged with a registrar for a proclaimed place other than Sydney, the registrar at that other place shall forward the statement of claim to the registrar for Sydney for filing and entry in the List.

- (4) An action under the Acts, and any proceedings ancillary to such action, may be set down for hearing at any proper place.

**3 Directions**

- (1) Where any proceedings are entered in the List, the registrar shall, as soon as convenient and not later than 3 months after the filing of a statement of claim, list the proceedings before a Judge (appointed by the Chief Judge for the control of proceedings in the List) for directions under this rule, and shall advise the parties of the listing.
- (2) Where any proceedings are before a Judge for directions under this rule, the Judge may give such directions as may be thought fit concerning the preparation of the proceedings for hearing, the conduct of the hearing and the adducing of evidence at or before the hearing.
- (3) Without limiting the generality of subrules (1) and (2), directions which may be given under this rule include directions as to the times within which, and the modes in which, particulars are to be given, documents are to be prepared and exchanged, documents are to be inspected, the application of Part 23, a further directions hearing and an order fixing a hearing date.
- (4) A direction given under this rule, and an order made in respect of non-compliance with such a direction, shall apply notwithstanding any time, mode, or penalty for non-compliance otherwise fixed by the rules or the practice of the Court.
- (5) In this rule:  
*document* includes an affidavit or statement of evidence and experts' reports (including any made by a medical practitioner).

**4 Expert evidence and hospital reports**

The provisions of Part 28 rules 8 and 9 apply to proceedings in the List subject to the following modifications:

- (a) each party to proceedings must, as soon as possible after their receipt and at least 28 days before any hearing date is allocated to the proceedings, serve experts' reports and hospital reports on each party who has an address for service in the proceedings,

- (b) a party who requires the attendance of a person for cross-examination under Part 28 rule 9 (2) must inform the Court and all other parties to the proceedings that the party has done so or wishes to do so at a directions hearing before any hearing date is allocated to the proceedings.

#### **5 Oral expert evidence**

- (1) Unless the Court otherwise orders, where a party has served reports by more than one expert in the same field, that party shall not call more than one of those experts to give oral evidence.
- (2) This rule does not affect:
  - (a) the right of a party to tender reports by more than one expert in the same field, or
  - (b) the right of a party to require an expert to attend for cross-examination.

#### **6 Settling of orders**

- (1) Where the Court gives a decision or makes a final order disposing of any proceedings in the List, the registrar shall as soon as convenient prepare and settle a form engrossing the decision or order.
- (2) The registrar shall sign and seal any form of decision or order settled by him, and as soon as practicable cause a copy to be forwarded to each party to the proceedings.

#### **[5] Part 39B**

After Part 39A, insert:

### **Part 39B Costs in Coal Miners' Workers Compensation List and Special Statutory Compensation List matters**

#### **1 Application**

- (1) The provisions of this Part apply subject to their terms, to proceedings entered in the Coal Miners' Workers Compensation List and the Special Statutory Compensation List in respect of costs payable or to be assessed under any order of the Court or under the rules.

## 2003 No 963

District Court Amendment (Coal Miners' and Special Statutory Compensation Claims) Rule 2003

Schedule 1 Amendments

---

- (2) Where there is an inconsistency in the operation of these rules and the provisions of this Part the provisions of this Part shall apply.
- (3) The application of these rules and of this Part is subject to:
  - (a) the Act,
  - (b) the Workers Compensation Acts and the regulations made under those Acts,
  - (c) a Special Statutory Compensation Act and the regulations made under that Act, or
  - (d) the *Legal Profession Act 1987* and the regulations made under that Act.

### 2 Interpretation

In this Part, and unless the context or subject matter otherwise indicates or requires, a reference to costs is a reference to costs payable between party and party in respect of proceedings, including disbursements.

### 3 Time for dealing with costs

The Court may in any proceedings exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

### 4 Worker's costs

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 the worker's costs of the proceedings against the employer against whom the final order or decision was made or given.

### 5 Redemption cases

Where an employer commences proceedings for redemption under section 15 of the *Workers' Compensation Act 1926*, as preserved by Part 18 of Schedule 6 to the *Workers Compensation Act 1987*, 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.



## **6 Costs where other proceedings**

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.

## **7 Assessed costs and other provisions**

- (1) Subject to this Part, where, by or under the rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to assessed costs.
- (2) Where the Court orders that costs be paid to any person, the Court may, at any time prior to the costs being referred for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:
  - (a) a proportion specified in the order of the assessed costs,
  - (b) the assessed costs from or up to a stage of the proceedings specified in the order, or
  - (c) a gross sum specified in the order instead of the assessed costs.

## **8 Preliminary discovery**

The Court may in any action require any person to pay the costs of a party to the action of proceedings under Part 4 in respect of that action including payments of conduct money and payments on account of expenses and loss under that Part.

## **9 Agreement as to costs**

- (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 process of enforcement 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.

**10 Agreement as to part of costs**

- (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 process of enforcement 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.

**11 When costs payable**

- (1) Where, before the conclusion of any proceedings, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until after the conclusion of the proceedings.
- (2) Where, in any proceedings, it appears to the registrar, on application, that there is no likelihood of any further order being made in the proceedings, the registrar may order that any costs ordered to be paid shall be payable forthwith.

**12 Party and party basis**

Costs payable by or under the rules or any order of the Court shall be payable on a party and party basis unless the rules or an order provide that they are payable on an indemnity basis.

**13 Indemnity basis**

On an assessment on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the assessor may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

**14 Costs order to confirm earlier costs orders**

An order as to costs made in proceedings after 30 June 1994 shall unless the Court otherwise orders, be taken to expressly confirm all earlier orders as to costs made in the proceedings.

BY AUTHORITY

---