



WORKERS COMPENSATION COMMISSION

E-Bulletin No. 4

July 2002

President's Welcome

Welcome to the fourth E-Bulletin of the Workers Compensation Commission.

A review has been undertaken of the rules for the production of documents under the *Interim Workers Compensation Commission Rules 2001*.

The new rules will be effective from 19 August 2002.

This e-bulletin features the new procedures for the production of documents under the new rules for the production of documents. The new rules are attached at the end of the e-bulletin for information only.

The Commission will be providing a series of workshops for practitioners once the rules are operational to assist in their implementation. Further information will be provided regarding this shortly.

Note the existing rules continue to apply until 19 August.

Justice Terry Sheahan
President
2 August 2002

Applying for a Direction for Production

You can lodge with the Commission a proposed Direction for Production by completing Form 8 and forwarding it to the Commission.

The Direction for Production form will be available to be downloaded from the Commission Website at www.wcc.nsw.gov.au from 19 August.

Please note that your request for a Direction for Production must be made within specified timeframes.

If you are an applicant the proposed Direction for Production MUST be lodged with the Commission with the application for dispute resolution or no later than 5 days after being served with the respondents reply. Refer subrule 31A (3)(a).

If you are a respondent the proposed Direction for Production **MUST** be lodged with the Commission with your reply. Refer subrule 31A (3)(b).

If you are a party who has been joined to the proceedings the proposed Direction **Must** be lodged with your reply.

Requests for Directions Out of Time

If you wish to request a Direction for Production outside the timeframes stated above then you will need to show that:

- a. You were not aware, and could not reasonably have become aware through the exercise of due diligence of the existence of the requested material, at the time the direction was required to be sought, and
- b. Failure to issue the direction would result in a substantial injustice to you, and
- c. The other parties in the proceedings will not be prejudiced by the issuing of the direction.

In addition to your request for late issue you are required to provide to the Registrar and the other parties to the dispute, with written submissions addressing the criteria set out in rule 31A(4).

If you are a participant and you object to the Registrar issuing a Direction for Production that is out of time you **MUST** lodge a written notice, which includes the reasons for your objection within two days of being served with the submissions supporting the lodgement of the proposed Direction out of time.

When considering a request to issue Directions for Production out of time the Registrar may make a determination based solely on the written submissions or

- a. Seek further oral or written information for either the parties to the dispute or the producer,
- b. list the objection for hearing before the Registrar,
- c. refer the objection to an Arbitrator for determination.

Access Orders

When completing Form 8 the parties are expected to complete the section titled **PROPOSED ACCESS TO DOCUMENTS (INSPECTION AND COPYING)**.

The Commission has published Standard Access Orders which are set out below. Parties are encouraged to use these Standard Orders as a guide for completing Form 8.

Standard Access Orders

Nature of documents	First access to
Worker's medical records	Worker
Insurance file (of a party)	Insurer
Employer's file (where that employer or its insurer is a party)	Insurer
Employer's file (relating to other employment of the worker)	Worker
Financial or other personal records relating to the worker (whether sought from the worker or a third party)	Worker
Insurance file (relating to other insurance claim by the worker)	Worker
Court file or coroner's report	Both parties
Criminal record of worker	Worker
Criminal record of insurer or employer	Insurer
Criminal record of other person	Both parties
Any document relating to another person (e.g. a witness)	Both parties

Given that a copy of the sealed Direction for Production is to be served on the producer and all other parties to the dispute the Commission does not propose to alter the party that has been specified as having first access, unless another party objects to the proposed order. If no such objection is lodged, the order in which parties access documents will be as stipulated in the sealed Direction for Production.

Access to documents takes place in two stages. Parties will access documents in the following order:

- a. the party nominated as having first access will view the documents first. The first access period should not exceed 5 days.
- b. The other parties to the dispute will then have access for the same length of time as the first access period, immediately following the first access period.

Parties are advised that access to documents will be granted only for the period in which that particular party has been nominated as having access.

If you are nominated as the party having first access you will be able to view the documents only in the first access period. If you are the party who has access to the documents after the first access period has expired then you can only view the documents in the second access period.

The Registrar will insert the date for production on the proposed Direction for Production and seal the document. The party requesting the direction MUST serve the sealed Direction on the Producer and all other parties to the dispute. Service of the sealed Direction for Production MUST occur not less than 5 days before the date for production specified on the sealed Direction.

If you intend to serve the Direction for Production interstate then you must comply with the *Service and Execution of Process Act 1992*.

Should a party require abridgement of service the party must write to the Registrar of the Commission providing reasons why abridged service is warranted.

If a producer has consented to the abridgement of service or the circumstances of the case warrant abridged service the Registrar may issue a Direction for Production with the abridgement of the service period.

Note that if a producer is not served with a sealed Direction for Production at least 5 days before the return date they are not required to comply with the Direction for Production.

The Registrar may set aside or vary a direction for production wholly or in part where a request is made in accordance with the rules of the Commission (see rule 31E)

Date for Production of Documents

The Commission will insert the date for production into the proposed direction. The date for production for producers within New South Wales will generally be 14 calendar days after the direction is returned to the requesting party, and 28 calendar days for interstate producers. To give the producer the maximum time for production the requesting party should serve the direction as soon as possible. At least 5 working days service is required. It is important that the requesting party contacts the intended producer before service or, ideally, before issue, to alert him or her to the production required.

Failure to Comply with the Direction

If a person has failed to comply with a Direction for Production the party who has requested the Direction may:

- a. Request that the producer be excused from complying with the direction,
- b. Request that the terms of the Direction be altered,
- c. Request an extension of time of up to 5 days for compliance with the direction,
- d. Request that the matter be referred to the WorkCover Authority.

Any of the requests listed in paragraph (a) through to (d) above must be made in writing to the Registrar and must include the reasons supporting the request.

For Requests to Excuse Production and Requests that the Terms of the Directions be Altered, the written request MUST be served on all parties to the proceedings no later than 2 days after the date for production. If you object to a party's request you MUST lodge a notice in writing which includes your reasons for objection with the Registrar within two days of being served with the original request.

The Registrar will deal with the requests made pursuant to Rule 31F in the same manner as a request for a Direction for Production, which is made out of, time.

Please note that the Registrar may only grant an extension of time for a producer to comply with a direction if the party who requested the direction has, before the date of production, taken reasonable measures to ensure compliance with the Direction for Production.

Where the Registrar grants an extension of time to comply with a direction for production, the party requesting the extension of time MUST serve a notice on the producer and all other parties to the proceedings advising the parties to the proceedings of the extension granted by the Registrar, as soon as practicable.

Objections by the Producer

A person directed by the Commission to produce documents may object to the production of documents and/or the terms of access to the documents produced.

If you are directed to produce documents and you object you MUST notify the Registrar in writing and provide your reasons for the objection prior to the date for production. You MUST clearly identify the documents to which your objection applies as well as providing reasons that support your objection.

If you lodge an objection in accordance with rule 31G then you are excused from complying with the direction until the Registrar determines the objection raised.

The Registrar will notify the parties if a person directed to produce raises an objection. If you are a party to the proceedings and you wish to oppose an objection raised by a person directed to produce documents you MUST lodge with the Registrar, details of your opposition in writing. If you oppose an objection raised by a person directed by the Commission to produce documents then you MUST lodge your written notice with the Registrar within two days of being notified by the Registrar of the producer's objection.

The Registrar will determine the objection raised by the person directed to produce in the same manner as a request for the issuing of a Direction for Production out of time.

When determining an objection raised pursuant to rule 31G the Registrar may set aside or vary the terms of the Direction for Production.

Objection by a Party Prior to Production

A party to proceedings before the Commission may object to the production of documents, the terms of the first access order or the terms of access to the documents produced. (refer rule 31H(1))

If you wish to object to a Direction for Production under rule 31H subrule (1) then you must provide written notice to the Registrar and all other parties to the proceedings prior to the date of production. You MUST include details of your reasons for objection in the written notice you serve on the Registrar and all of the parties to the proceedings.

If you oppose the objection raised you are required to lodge a written notice including reasons with the Registrar within two days of being served with the notice of objection.

The Registrar will determine the objection to the Direction for Production in the same manner as a request for the issuing of a Direction for Production out of time.

Objection after Production by a Party Entitled to First Access

A party who is entitled to first access to documents produced to the Commission can object to any other party having access to those. This right is exercised pursuant to rule 31I.

If you object to a direction for production under subrule 31I(1) you MUST prior to the expiry of the first access period

- a. Separately package and identify the documents to which the objection for access applies, and
- b. Notify the Registrar and the other parties to the proceedings of the objection clearly identifying the documents that are the subject of the objection as well as providing reasons supporting your objection.

Where an objection has been raised in accordance with subrule 31I(2) the other parties to the proceedings may access documents produced only in accordance with the terms of the objection unless the Registrar has otherwise determined the objection in accordance with subrule 31I(5).

If you oppose an objection raised by a party you MUST lodge a written notice including your reasons for opposing the objection with the Registrar prior to the expiry of YOUR access period.

It is important to note that the Objection will only be determined by the Registrar or an Arbitrator if an opposition is lodged by another party.

The Registrar will determine the objection raised in the same manner as a request for the issuing of a Direction for Production out of time.

Compliance

Documents may be produced to the Commission by hand, ordinary post, DX or electronic communication to the address of the Commission stated on the Direction for Production.

A person producing documents to the Commission should produce clear, sharp photocopies of the documents.

The Registrar will advise the parties to the proceedings when documents have been produced to the Commission in compliance with a direction for production.

Where a producer has been provided with insufficient funds to cover the producer's reasonable expenses the producer is not required to comply with the direction. Please note that the funds to meet the reasonable expenses of the producer MUST be provided to the producer at the time of service of the Direction for Production.

Where the producer is not a party and in consequence of the service of the direction, reasonably incurs an expense or loss substantially exceeding any sum paid under subrule 31K(1), the Registrar may order that the party who requested the issue of the direction, pay the producer an additional amount in respect of the expense or loss.

Documents produced to the Commission under a Direction for Production may be returned to the producer if the direction requiring production requests the return of

the documents. If the direction requiring production is silent in relation to the return of document the Commission may destroy the documents, if no appeal is lodged, 28 days after the Arbitrators determination or after the determination of an appeal or the expiry of the period for any further appeal.

Costs Regulations and Directions for Production

The costs regulations provide for the payment of professional fees where a party requests the issuing of a Direction for Production. The maximum amount for the issuing of Direction for Production is stated at item 4.03 in schedule 6 Maximum Costs – compensation matters of the [WORKERS COMPENSATION \(GENERAL\) REGULATION 1995](#). The amount payable is \$60.00 for the first request and \$40.00 for each subsequent request. The maximum sum payable for requesting the issuing of Directions for Production is \$220.00.

Interim Workers Compensation Commission Rules (Amendment No 1) 2001

The new rules will be effective from 19 August 2002. The existing rules are applicable until 19 August 2002.



Interim Workers
Compensation C..

General Assistance

For any general information or assistance on changes to making a claim, provisional payments and entitlements, phone WorkCover Assistance on 13 10 50.

Contact the Commission

For information, assistance or a request for dispute resolution, please contact the Workers Compensation Commission between 8.30am and 5.00pm Monday to Friday:

By telephone: 1300 368 040

TTY: (02) 9261 3334

By facsimile: 1300 368 018

In person at: The Registry, Level 21, 1 Oxford Street, Darlinghurst NSW 2010

Postal Address: PO Box 594, Darlinghurst NSW 1300 *or*

Document Exchange: DX11524, Sydney Downtown

Email: registry@wcc.nsw.gov.au

Further information and forms are available at: www.wcc.nsw.gov.au