

I certify that this is a copy of the authorised version of this Statutory Rule as at 5 November 2021, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021.

Robyn Webb
Chief Parliamentary Counsel
Dated 18 February 2022

TASMANIA

WORKERS REHABILITATION AND COMPENSATION REGULATIONS 2021

STATUTORY RULES 2021, No. 49

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SCHEDULE 1 – FORM FOR PURPOSE OF SECTION 33A OF ACT

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WORKERS REHABILITATION AND COMPENSATION REGULATIONS 2021

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Workers Rehabilitation and Compensation Act 1988*.

Dated 21 June 2021.

B. BAKER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Workplace Safety and Consumer Affairs

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Workers Rehabilitation and Compensation Regulations 2021*.

2. Commencement

These regulations take effect on 13 July 2021.

3. Interpretation

In these regulations –

Act means the *Workers Rehabilitation and Compensation Act 1988*;

application means an application under the Act to the Tribunal;

deputy registrar means a Deputy Registrar within the meaning of the *Tasmanian Civil and Administrative Tribunal Act 2020*;

document includes –

- (a) a copy of a document; and
- (b) an audio tape or soundtrack or compact disc; and
- (c) a computer program or software and any other information recorded in or processed by a computer; and
- (d) a film, photograph, videotape or cinematographic film;

inspect includes the following, with or without the aid of equipment:

- (a) view data or visual images embodied in any device;
- (b) listen to sounds embodied in any device;

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- (c) reproduce sounds, data or visual images embodied in any device;

party means a party to an application or referral;

proof of evidence means a written statement containing the substance of an expert witness's evidence;

property includes real and personal property;

referral means a referral under the Act;

Registrar includes a deputy registrar;

working director means a person who –

- (a) is a director of a company; and
- (b) performs work for that company under a contract of service.

PART 2 – PRACTICE AND PROCEDURE

Division 1 – Practice and procedure of Tribunal

4. Delay

- (1) If the Tribunal considers that the conduct of an application or referral has been unduly delayed, the Tribunal, by giving notice to the parties, may make any of the following orders:
 - (a) an order fixing the date on which an arbitrated hearing is to occur;
 - (b) an order fixing a timetable for the completion of any proposed action by the parties and any consequential order if that timetable is not complied with;
 - (c) any other order it considers appropriate.
- (2) In determining whether or not the conduct of an application or referral has been unduly delayed, the Tribunal is to have regard to any time limits fixed by these regulations or the Act.
- (3) Any party may request that the Tribunal make an order under subregulation (1).

5.

6. Discovery

- (1) A party, by notice in writing served on any other party, may request –
 - (a) discovery of any document or property that is relevant to the issues in dispute in any application or referral; and
 - (b) a list of all documents discoverable under paragraph (a); and
 - (c) disclosure of the location of those documents.
- (2) A party on whom a notice is served under subregulation (1) is to comply with the notice within 14 days after the date of service of the notice or within any other period agreed to by the parties.
- (3) The Tribunal may order a party who has not complied with subregulation (2) to make discovery under subregulation (1) within any period that the Tribunal considers appropriate.
- (4) If further documents that are discoverable under subregulation (1)(a) come into the possession, custody or control of a party who has already made discovery, that party is to make further discovery as soon as practicable.
- (5) Any document in respect of which privilege is claimed under any law is exempt from discovery.

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- (6) This regulation does not apply to a referral made under section 81A of the Act, other than a referral made under section 81A(5) of the Act.

7. Inspection of discovered documents

- (1) A party, by notice served on any other party, may request inspection of any discovered document in the possession, custody or control of that other party.
- (2) A party on whom a notice is served under subregulation (1) is to provide, within 14 days after the date of service of the notice or within any other period agreed to by the parties, a date, time and place for the inspection of the relevant document.
- (3) The Tribunal may order a party who has not complied with subregulation (2) to provide a date, time and place for the inspection of the relevant document within any period that the Tribunal considers appropriate.
- (4) A notice under this regulation may be made in combination with a notice under regulation 6.

8. Inspection of property

- (1) On the application of any party, the Tribunal may make an order for the inspection of any property in the possession, custody or control of a party which is relevant to the issues in dispute in any application or referral or as to which any question may arise.

- (2) The Tribunal may make an order subject to the condition that the party applying for the order pay the reasonable costs and expenses of any party required to make available the property for inspection.

9. Limitation of certain documents in evidence

- (1) Any plan, model, film, audio tape, disk, soundtrack or other device in which sounds, data or visual images are embodied is not receivable at the arbitrated hearing unless –
- (a) the parties agree, without further proof after having been given an opportunity to inspect it –
 - (i) before the arbitrated hearing at a time fixed by the Tribunal; or
 - (ii) if no time is fixed by the Tribunal, within a reasonable period before the arbitrated hearing begins; or
 - (b) the Tribunal, at or before the arbitrated hearing, otherwise orders.
- (2) A party, without notice to any other party, may apply to the Tribunal for an order for evidence of any plan, model, film, audio tape, disk, soundtrack or device referred to in subregulation (1) to be received at the arbitrated hearing without prior disclosure to any other party.

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- (3) An application is to be made before the arbitrated hearing.
- (4) The Tribunal may –
 - (a) make the order; or
 - (b) refuse to make the order; or
 - (c) direct that the application be served on any other party before making an order under paragraph (a) or (b).

10. Interrogatories

- (1) A party is not to interrogate any other party except with the leave of the Tribunal.
- (2) The Tribunal may only grant leave to interrogate if, in the opinion of the Tribunal, an interrogatory is likely to –
 - (a) narrow the issues in dispute; or
 - (b) shorten the proceedings.
- (3) A party is to answer an interrogatory by affidavit.

11. Orders against non-parties

- (1) The Tribunal may make any or all of the following orders against a person who is not a party to an application or referral:

- (a) an order for inspection of a document that is relevant to the issues in dispute in any application or referral;
 - (b) an order authorising the observation or recording of, or the taking of a sample of or from, any property;
 - (c) an order that a person make discovery of any document or property that –
 - (i) is relevant to the issues in dispute in any application or referral; and
 - (ii) is or has been in the possession, custody or power of that person;
 - (d) an order that a person answer on oath any interrogatory that is relevant to the issues in dispute in any application or referral.
- (2) An order under subregulation (1) may be general or limited to a certain class of documents or property.

12. Failure to comply with directions of conciliator

If a party fails to carry out any direction under section 42I of the Act, the Tribunal may make –

- (a) an interim order; or
- (b) any other order that it considers appropriate.

13. Witness not required to attend arbitrated hearing

- (1) Subject to regulation 14, a witness is not required to attend an arbitrated hearing if –
 - (a) the party calling the witness serves an affidavit of the witness or, in the case of an expert witness, a proof of evidence on the other parties not less than 14 days before the date fixed for the hearing; and
 - (b) within 7 days after the affidavit or proof of evidence is served, another party has not objected to the use of the affidavit or proof of evidence at the hearing.
- (2) An objection under subregulation (1)(b) is to be –
 - (a) in writing; and
 - (b) served on the other parties.
- (3) An affidavit or proof of evidence served under subregulation (1) is receivable at the arbitrated hearing if an objection has not been made.
- (4) The Tribunal may order a party whose objection it considers unreasonable to bear the costs associated with the attendance of any witness.

14. Witness requested to attend arbitrated hearing

- (1) A party served with an affidavit or proof of evidence under regulation 13(1)(a) who has not objected under regulation 13(1)(b) within 7 days after that service, may request the attendance of

the maker of the affidavit or proof of evidence at an arbitrated hearing for the purpose of cross-examination.

- (2) A request is to be –
 - (a) in writing; and
 - (b) served on the other parties.
- (3) The Tribunal may order a party whose request it considers unreasonable to bear the costs associated with the attendance of any witness.

Division 2 – Costs

15. Bill of costs

- (1) If costs are not agreed between the parties, the successful party to whom costs have been awarded by an order of the Tribunal may serve a bill of costs on any other unsuccessful party.
- (2) Unless the Tribunal otherwise orders, the fees in a bill of costs are to be at the rate of 85% of the fees set out in Part 1 of Schedule 1 to the *Supreme Court Rules 2000*.

16. Objection to bill of costs

- (1) An unsuccessful party is taken to admit each item on a bill of costs unless that party delivers to the Registrar, and to the successful party, a notice of objection within 14 days after the date of service of the bill of costs.

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Part 2 – Practice and Procedure

- (2) A notice of objection is to –
 - (a) specify the items objected to on the bill of costs; and
 - (b) specify detailed reasons for each objection; and
 - (c) include a copy of the bill of costs.

17. Assessment of costs

- (1) After receiving a notice of objection under regulation 16, the Registrar is to –
 - (a) fix a date, time and place for an assessment of costs; and
 - (b) notify the parties accordingly.
- (2) At an assessment of costs, the Registrar may allow or disallow costs including costs in respect of the assessment.
- (3) An assessment of costs may proceed in the absence of any party.
- (4) Within 48 hours after making an assessment of costs, the Registrar is to –
 - (a) issue a certificate of assessment; and
 - (b) provide a copy of that certificate to the parties.
- (5) If the disallowed costs represent one-sixth or more of the allowed costs specified in the certificate of assessment –

- (a) the successful party is not entitled to any costs in respect of the assessment; and
- (b) costs in respect of the assessment may be awarded to an unsuccessful party.

18. Review of assessment

- (1) A party may apply for a review of assessment within 7 days after receiving the certificate of assessment.
- (2) An application is to –
 - (a) be forwarded to the Tribunal and to the other parties; and
 - (b) specify any item in respect of which a review is sought; and
 - (c) state detailed reasons for seeking the review of each item.
- (3) On receiving an application, the Tribunal is to –
 - (a) fix a date, time and place for the review; and
 - (b) notify the parties accordingly.
- (4) In determining the application, the Tribunal may allow or disallow –
 - (a) any item reviewed; and
 - (b) costs in respect of the review.

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Part 2 – Practice and Procedure

- (5) The Tribunal is to provide written reasons for the allowance or disallowance of any item reviewed.

PART 3 – MISCELLANEOUS

19. Prescribed form of notice of right to make claim for compensation

For the purposes of section 33A of the Act, the notice set out in Schedule 1 is prescribed.

20. Industrial deafness

(1) In this regulation –

BHI means binaural hearing impairment.

(2) For the purpose of section 73(3) of the Act, the class of persons is the class consisting of persons who are –

(a) medical practitioners with specialised qualifications and experience in otorhinolaryngology; or

(b) full members, or qualified to be full members, of the Audiological Society of Australia.

(3) The following table is prescribed for the purpose of section 73(4) of the Act:

Relationship of binaural hearing impairment to impairment of the whole person

	% BHI	% Whole person impairment
1.	5 or less	0

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2.	More than 5	$5 + [0.278 (\text{BHI}-5)]$ (rounded to the nearest whole number)
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21. Maximum amounts for burial and cremation and counselling of family members

- (1) For the purpose of section 75(1)(b)(i) of the Act, the prescribed amount is \$9,500.
- (2) For the purposes of section 75(1)(b)(ii) of the Act, the prescribed amount is \$4,000.

22. Prescribed amount for travelling expenses

For the purpose of section 76(1)(b) of the Act, the prescribed amount is an amount at the same rate and on the same terms as is prescribed from time to time for the equivalent travelling expenses in clause 3 of Part IV of the Tasmanian State Service Award made under the *Industrial Relations Act 1984* by the Tasmanian Industrial Commission constituted under section 5 of that Act.

23. Prescribed service and prescribed persons

For the purpose of section 77A(3) of the Act –

- (a) a prescribed service is the assessment of the degree of a worker's impairment in accordance with section 72 of the Act; and

- (b) the class of persons prescribed to provide that service are accredited medical practitioners who are accredited to assess the degree of a worker's impairment.

24. Proving certain matters

For the purpose of section 83 of the Act –

- (a) a worker is to prove continued incapacity by providing a declaration or certificate by a medical practitioner; and
- (b) the prescribed interval at which a worker is to prove the matters in that section is every 3 months.

25. Money paid to Public Trustee

Money paid to the Public Trustee under section 91(2) of the Act is to be invested, applied or otherwise dealt with by the Public Trustee in accordance with the provisions of the *Public Trustee Act 1930*.

26. Information provided to licensed insurer

- (1) The following information is the other information prescribed for the purposes of section 97(6) and (7) of the Act:
 - (a) the full name and address of the employer;

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- (b) the Australian Business Number of the employer;
 - (c) the main business carried on by the employer;
 - (d) any other business carried on by the employer;
 - (e) the number of any full-time workers, part-time workers and casual workers employed by the employer;
 - (f) the names of any working directors and their family members covered by the policy of insurance.
- (2) If an employer is engaged in more than one business at one location, the main business is the business for which the largest proportion of wages is paid.

27. Declaration of provisions of certain laws to be about damages for work-related injuries

For the purposes of the definition of *a State's legislation about damages for a work-related injury* in section 138AI of the Act, each of the following laws of a State is declared to be, in relation to the State of which it is a law, the State's legislation about damages for a work-related injury:

- (a) *Workers Compensation Act 1951* of the Australian Capital Territory;

- (b) *Workers Compensation Act 1987* of New South Wales;
- (c) *Workplace Injury Management and Workers Compensation Act 1998* of New South Wales;
- (d) *Return to Work Act 1986* of the Northern Territory;
- (e) *Workers' Compensation and Rehabilitation Act 2003* of Queensland;
- (f) *Return to Work Act 2014* of South Australia;
- (g) *Accident Compensation Act 1985* of Victoria;
- (h) *Workplace Injury Rehabilitation and Compensation Act 2013* of Victoria;
- (i) *Workers' Compensation and Injury Management Act 1981* of Western Australia.

28. Infringement notice offences and penalties

For the purpose of section 148A of the Act –

- (a) an offence in a provision of the Act specified in column 1 of the table in Schedule 2 is a prescribed offence; and
- (b) the penalty specified in column 2 of the table in Schedule 2 is prescribed as the penalty for a natural person for the

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relevant offence specified in column 1 of the table; and

- (c) the penalty specified in column 3 of the table in Schedule 2 is prescribed as the penalty for a body corporate for the relevant offence specified in column 1 of the table.

**SCHEDULE 1 – FORM FOR PURPOSE OF SECTION
33A OF ACT**

Regulation 19

**FORM FOR INFORMATION AS TO RIGHT TO
MAKE WORKER’S COMPENSATION CLAIM**

***Form for information under section 33A of the Workers
Rehabilitation and Compensation Act 1988***

1. On *[insert date on which notice of injury was given by worker*]* you notified the employer named below (“your employer”) that you had suffered an injury that you believe was caused by your employment with your employer.
2. In accordance with section 33A of the *Workers Rehabilitation and Compensation Act 1988*, I advise, on behalf of your employer, that you have the right under that Act to make a claim for compensation for the injury.
3. If you wish to make a claim for compensation, you should do so as soon as practicable.
4. Generally, you may only make the claim within 6 months after the date on which the injury occurred. However, if the injury consists of a loss of hearing due to exposure to industrial noise, you may only make the claim while you are still employed by your employer or within 6 months after you stop being employed by your employer.
5. A claim for compensation must be made on the approved form. You may ask your employer for a copy of the approved form.

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**FORM FOR INFORMATION AS TO RIGHT TO
MAKE WORKER'S COMPENSATION CLAIM**

6. You must attach to a claim for compensation a worker's compensation medical certificate that has been issued by a medical practitioner.
7. You must tell your employer the name of the medical practitioner who is to have primary responsibility for treating your injury. The practitioner is to provide medical certificates, coordinate your medical treatment for the injury and, if necessary, assist in your rehabilitation and return to work.
8. If you wish to talk with your employer about any matter related to this notice, you may speak to *[insert name of person nominated by employer*]* who may be contacted on *[insert contact telephone number*]*.
9. If you need assistance in relation to the injury or a claim for compensation, you may telephone the WorkSafe Tasmania Helpline on 1300 366 322 or, for callers outside Tasmania, 03 6166 4600.

Signed by.....

[Signature]*

On behalf of the following employer:

.....

[Name of employer]*

Note: Items marked with an asterisk are to be completed by a person authorised by the employer to give this notice to the injured worker.

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SCHEDULE 2 – INFRINGEMENT NOTICE OFFENCES		
Regulation 28		
Column 1	Column 2	Column 3
Section of Act	Natural person (penalty units)	Body corporate (penalty units)
1. Section 33A(1)	2	5
2. Section 39(1)	2	5
3. section 77AA(1)	2	5
4. Section 81(2)	2	5
5. Section 81B(2)	2	5
6. Section 86(5)	2	5
7. Section 90B(3)	2	5
8. Section 97(4)	2	5
9. Section 97(6A)	2	5
10. Section 97(8)	2	5
11. Section 114(2)	2	5
12. Section 128(6)	2	5
13. Section 143A(1)	2	5
14. Section 143D(1)	2	5
15. Section 143L(3)	2	5

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	Column 1	Column 2	Column 3
	Section of Act	Natural person (penalty units)	Body corporate (penalty units)
16.	Section 143M(4)	2	5
17.	Section 147(7)	2	5
18.	Section 151(7)	2	5

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 30 June 2021.

These regulations are administered in the Department of Justice.

NOTES

The foregoing text of the *Workers Rehabilitation and Compensation Regulations 2021* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
¹ <i>Workers Rehabilitation and Compensation Regulations 2021</i>	S.R. 2021, No. 49	13.7.2021
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021

¹Expiry on 30 June 2031 - Subordinate Legislation Act 1992

TABLE OF AMENDMENTS

Provision affected	How affected
Regulation 3	Amended by No. 18 of 2021, s. 392
Regulation 5	Rescinded by No. 18 of 2021, s. 393