



Western Australia

## **Workers' Compensation (DRD) Rules 2005**

Compare between:

[12 Dec 2009, 01-c0-02] and [19 Feb 2010, 02-a0-02]





Western Australia

Workers' Compensation and Injury Management Act 1981

## Workers' Compensation (DRD) Rules 2005

### Part 1 — Preliminary

**1. Citation**

These are the *Workers' Compensation (DRD) Rules 2005*<sup>1</sup>.

**2. Commencement**

These rules come into operation on the day on which section 130 of the *Workers' Compensation Reform Act 2004* comes into operation<sup>1</sup>.

**3. Terms used**

(1) In these rules, unless the contrary intention appears —

***applicant*** means a person who applies for a decision of a dispute resolution authority;

***application*** means an application for a decision of a dispute resolution authority;

***approved form*** means a form approved under rule 114;

***clause*** means a clause of Schedule 1 to the Act;

***proceeding*** means a proceeding before a dispute resolution authority;

*respondent* means a person who is a party to a proceeding, other than the applicant;

*serve* has a meaning affected by rule 15.

- (2) A reference in these rules to an arbitrator includes a reference to the Director exercising the functions of an arbitrator.

#### **4. Transitional provisions**

Subject to Part 4 Division 3 of the *Workers' Compensation Reform Act 2004* —

- (a) these rules apply to a proceeding commenced before a dispute resolution body before the coming into operation of these rules or before a dispute resolution authority after the coming into operation of these rules; and
- (b) a step taken in a proceeding before a dispute resolution body under the Act before the commencement of these rules and in accordance with the *Workers' Compensation (Conciliation and Review) Rules 1994*<sup>2</sup> or the *Workers' Compensation (Compensation Magistrate's Court) Rules 1994*<sup>3</sup> has effect as if it were taken in accordance with these rules.

#### **5. Dispute resolution authority may waive requirements in a particular case**

A dispute resolution authority may waive a requirement of these rules in a particular case, either before or after the time for compliance with the requirement arises, as the authority thinks is necessary in the interests of justice or otherwise to give effect to the Act.

#### **6. Time**

- (1) In computing time for the purposes of these rules —
- (a) where a thing is required to be done in or in relation to a proceeding within a period of 5 days or less, Saturdays,

Sundays and public holidays are not to be included in that period; and

- (b) where a thing is required to be done in or in relation to a proceeding within a number of clear days after a particular document is filed or served, the day on which that document is filed or served is not to be counted as a clear day.
- (2) Where no time is fixed for the doing of any thing in or in connection with a proceeding, a dispute resolution authority may, by order, fix the time within which the thing must be done.

**7. Extension or abridgement of time**

A dispute resolution authority may by order extend or abridge any time fixed under these rules or by order of any dispute resolution authority.

**8. Any arbitrator may exercise function**

Where a proceeding is before an arbitrator, any function or power of that arbitrator relating to that proceeding under these rules may be exercised by a dispute resolution authority.

**9. Order to obey requirement of rules or order**

- (1) A dispute resolution authority may issue a written order to a party to a dispute requiring the party to obey a requirement of these rules or an order made under them.
- (2) The order —
  - (a) may be issued to a party without having summoned or heard the party;
  - (b) must state a date on or before which the order has to be obeyed; and
  - (c) must be served upon the party at least 3 clear days before the date on which the party has to obey it.

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- (3) This rule does not limit the dispute resolution authority's other powers to make orders.

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## Part 2 — Filing documents

### 10. Filing applications and other documents

- (1) An application or other document required to be filed with the Director may be filed by —
  - (a) presenting it at the office of the DRD when the office is open for business;
  - (b) sending it to the office of the DRD by pre-paid post; or
  - (c) sending it to the office of the DRD by fax in accordance with rule 11.
- (2) A person filing a document under subrule (1)(a) or (b) must, at the same time —
  - (a) file a copy to be returned to the person; and
  - (b) if the Act or these rules require a copy of the document to be served on another person, file a copy that is to be returned to the person filing the document so that he or she can arrange for it to be served on each other person.

*[Rule 10 amended in Gazette 6 Nov 2009 p. 4447.]*

### 11. Filing by fax

- (1) The Director must publish a fax number for the DRD.
- (2) Subject to this rule, a document may be filed by fax.
- (3) A document sent to the DRD by fax for filing must —
  - (a) be sent to the published fax number for the DRD; and
  - (b) have a cover page stating —
    - (i) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and
    - (ii) the total number of pages (including the cover page) being sent by fax.

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- (4) A document that, with any attachments and a cover sheet, is more than 20 pages long, must not be filed by fax unless the Director has, before the filing, given permission under subrule (5A).
- (5A) The Director may give a person permission to file a document by fax if the Director feels that —
  - (a) a refusal to give the permission would occasion undue hardship to the person; or
  - (b) it is warranted given the urgency of the circumstances.
- (5) A person who files a document with the DRD by fax must —
  - (a) endorse the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and
    - (ii) the date and time the document was sent by fax; and
  - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (c) if directed to do so by a dispute resolution authority, produce the items referred to in paragraph (b) to the dispute resolution authority; and
  - (d) attach a copy of, or otherwise confirm on the coversheet of the fax, the Director's permission under subrule (5A).
- (6) A document filed by fax is to be taken to have been filed —
  - (a) if the whole document is received before 4.30 p.m. on a particular day, on that day; or
  - (b) otherwise, on the next day.
- (7) A document that is sent by fax to the office of the DRD is to be taken not to have been filed if —
  - (a) it is not sent in accordance with the requirements of this rule; or

- (b) the document or cover page is completely or partly illegible.
- (8) A dispute resolution authority may at any time order a person who has filed a document by fax to file the original version of the document.

*[Rule 11 amended in Gazette 6 Nov 2009 p. 4448.]*

## **12. Acceptance of document**

A document is accepted by the Director when the DRD's seal is affixed to it.

## **13. Director may refuse to accept non-compliant documents**

- (1) The Director may refuse to accept for filing a document that —
  - (a) does not comply with these rules or an order of a dispute resolution authority; or
  - (b) is not accompanied by documents required under these rules or an order of a dispute resolution authority.
- (2) If the Director refuses to accept a document that was delivered or sent to the DRD then the document is to be taken not to have been filed.
- (3) Except as provided in subrule (4A), a dispute resolution authority may, on the authority's own motion or on the application of a party to the dispute, vary or revoke a decision by the Director under this rule.
- (4A) The dispute resolution authority must not exercise the power conferred by subrule (3) on its own motion if the decision of the Director relates to a document commencing a proceeding.
- (4) An application by a party for a dispute resolution authority to vary or revoke a decision of the Director under this rule may be heard in the absence of another party.

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- (5) If the application is in relation to a refusal to accept for filing a document commencing a proceeding, the person wishing to file the document is to be taken to be a party for the purposes of making the application under these rules.
- (6) If the Director refuses to accept a document for filing, the Director must give the party written notice of the refusal as soon as practicable but in any event within a period of 3 days after the document was received by the DRD.

*[Rule 13 amended in Gazette 26 May 2006 p. 1893; 6 Nov 2009 p. 4449-50.]*

### **Part 3 — Serving documents**

#### **14. Party who files document must serve a copy on other parties and on insurer**

- (1) A party who files a document with the Director must serve a copy of the document returned after filing bearing the DRD's seal —
  - (a) on each other party; and
  - (b) except as provided in subrule (2A), on the insurer of each other party who is an employer (but not a self-insurer).
- (2A) Subrule (1)(b) does not require an employer to serve a document on the employer's insurer unless there is a dispute between the employer and the insurer.
- (2) Unless these rules expressly provide otherwise or it is ordered otherwise, the document must be served under subrule (1) within 7 days after the day on which it is accepted by the Director.

*[Rule 14 amended in Gazette 6 Nov 2009 p. 4450.]*

#### **15. Serving documents**

- (1) If these rules require a document to be served on a person, the document must be served —
  - (a) on the person under rule 16;
  - (b) by delivering it, or sending it by pre-paid post —
    - (i) if an address has been provided under rule 17, to that address; or
    - (ii) if an address has not been provided under rule 17, to the person's usual or last known place of residence or principal or last known place of business, as the case may be;

or

- (c) by fax under rule 18.
- (2) Nothing in these rules prevents a person from consenting to being served with a document in a manner other than in accordance with this rule.
- (3) A document that is served by pre-paid post is, in the absence of evidence to the contrary, to be taken to have been served 3-business days after the day on which it was posted.

*[Rule 15 amended in Gazette 6 Nov 2009 p. 4450.]*

**16. Personal service**

- (1) A document may be served on an individual personally by —
  - (a) handing the document to the individual or, if the individual is a person under a legal disability, to the individual's parent, guardian or litigation guardian;
  - (b) if the individual or the individual's parent, guardian or litigation guardian, as the case may be, does not accept the document, putting it down in his or her presence and advising him or her of the nature of the document;
  - (c) handing the document to a person who is authorised in writing to receive documents on behalf of the individual;
  - (d) handing the document to someone at the individual's usual or last known place of residence who is believed, on reasonable grounds, to have reached 18 years of age; or
  - (e) handing the document to a legal practitioner or registered agent who is representing the individual.
- (2) A document may be served on a partnership personally by —
  - (a) handing the document to one of the partners;
  - (b) if the partner does not accept the document, putting it down in the partner's presence and advising the partner of the nature of the document;

- (c) handing the document to someone at the partnership's principal or last known place of business who, on reasonable grounds, is believed to be in charge of the business at the time of service; or
  - (d) handing the document to a legal practitioner or registered agent who is representing the partnership.
- (3) A document may be served on a corporation personally by —
- (a) handing the document to a person who, on reasonable grounds, is believed to be a director, manager or secretary of the corporation;
  - (b) handing the document to a legal practitioner or registered agent who is representing the corporation; or
  - (c) handing the document to the person apparently in charge of the registered office of the corporation.
- (4) A document may be served on a public authority personally by —
- (a) handing the document to a person who, on reasonable grounds, is believed to be the chief executive officer of the public authority or a person authorised by the chief executive officer to receive documents for the purposes of this paragraph; or
  - (b) handing the document to a legal practitioner or registered agent who is representing the public authority.

**17. Address for service of documents**

- (1) A document filed with the Director must contain the residential, business or postal address for the service of documents of the person filing the documents.
- (2) If the person filing the document is an individual who is not represented by a legal practitioner or a registered agent, the address for service must be the usual place of residence, principal place of business or postal address of the individual.

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- (3) If the person filing the document is a partnership that is not represented by a legal practitioner or a registered agent, the address for service must be the principal place of business or postal address of the partnership.
- (4) If the person filing the document is a corporation that is not represented by a legal practitioner or a registered agent, the address for service must be the registered office, principal place of business or postal address of the corporation.
- (5) If the person filing the document is represented by a legal practitioner or a registered agent, the address for service must be the principal place of business of the legal practitioner or registered agent, the postal address of the legal practitioner or registered agent or the number (if any) at a document exchange approved by the Director of the legal practitioner or registered agent.
- (6) If a party's address for service changes the party must file with the Director a notice of change of address as soon as practicable, and in any event not more than 3 days, after the address has changed.

*[Rule 17 amended in Gazette 6 Nov 2009 p. 4451.]*

**18. Fax address for service of documents**

- (1) For the purposes of enabling the service by fax of documents that the Act or these rules require to be served, a person may, in addition to providing an address in accordance with rule 17, provide a fax number operating at that address.
- (2) A person who under this rule provides a fax number is to be taken to consent to being served with documents by fax at that fax number.
- (3) If a party's fax number provided under this rule changes, the party must file with the Director a notice of change of address as soon as practicable, and in any event not more than 3 days, after the change occurs.

**19. Service of documents by fax**

- (1) If a person has provided a fax number under rule 18(1), the person may be served by sending the document by fax to that number.
- (2) Rule 11(3)(b)(i) and (ii) and (5), with any necessary changes, apply to a document served by fax in the same way as they apply to a document filed by fax.
- (3) A document that is served by fax on a person is to be taken to have been served —
  - (a) if the whole document is sent before 4.30 p.m. on a particular day, on that day; and
  - (b) otherwise, on the next day.

**20. Substituted service**

- (1) If for any reason it is impracticable to serve a document in the manner set out in rule 15, a dispute resolution authority may order that the document may be served by taking such steps as are set out in the order.
- (2) An application for an order under this rule must —
  - (a) be made by the person required to serve the document;
  - (b) set out the grounds upon which the application is made; and
  - (c) be verified by statutory declaration.
- (3) A document is to be taken to be served if such steps as are set out in the order are taken.

**21. Certificate of service**

- (1) In this rule —

*certificate of service* means a certificate of service in the approved form;

*file* means file with the Director.

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- (2) Except as provided in this rule, a party who serves a document must file a certificate of service in accordance with an order, if any, of a dispute resolution authority.
- (3) A person who files an application under Part XII of the Act must file a certificate of service within 7 days after serving a copy of the application.
- (4) A party who serves a copy of a notice of discontinuance on another party under rule 27(2) must file a certificate of service within 7 days after serving the copy.
- (5) A party who obtains an order for substituted service must file a certificate of service within 7 days after complying with the order.

*[Rule 21 inserted in Gazette 6 Nov 2009 p. 4451-2; amended in Gazette 11 Dec 2009 p. 5063.]*

## Part 4 — Representation

### 22. Notice of representation

- (1) A party to a proceeding must file with the Director notice of the appointment at any stage in the proceeding of a legal practitioner or registered agent to represent the party and serve a copy on the other parties.
- (2) The notice must be filed not less than 3 days after the appointment.
- (3) If the legal practitioner or registered agent is to represent the party from the commencement of the proceeding, the notice required under subrule (1) is to be taken to be filed if the legal practitioner or agent signs the first document filed on behalf of the party in the proceeding and gives in that document the address of the legal practitioner or registered agent as the party's address for service of documents.

### 23. Notice of change of representation

- (1) If at any stage in a proceeding a party changes the legal practitioner or registered agent by whom the party is represented, the party must —
  - (a) file with the Director notice of that change and of the party's new address for service; and
  - (b) serve a copy on the other parties.
- (2) The notice must be filed with the Director as soon as practicable, and in any event not more than 3 days, after the change.

*[Rule 23 amended in Gazette 6 Nov 2009 p. 4452.]*

### 24. Notice that representation has ceased

- (1) If at any stage in a proceeding a legal practitioner or registered agent representing a party ceases to represent the party, the legal

practitioner or registered agent must file a notice of cessation with the Director and serve a copy on the other parties.

- (2) The notice must be filed as soon as practicable, and in any event not more than 3 days, after representation ceasing.

*[Rule 24 amended in Gazette 6 Nov 2009 p. 4452.]*

**25. Litigation guardian**

- (1) An arbitrator may appoint a person who is not under a legal disability to be the litigation guardian of a child.
- (2) A person appointed as a litigation guardian of a child must serve written notice of the appointment on each person to whom the person is directed by the arbitrator to serve a copy of the notice.
- (3) If it appears to an arbitrator that a party to a proceeding is under a legal disability apart from being under 18 years of age, the arbitrator may, on the initiative of the arbitrator, adjourn the proceedings until such time as a litigation guardian has been appointed whether under the *Guardianship and Administration Act 1990* or otherwise.
- (4) A person appointed as a litigation guardian of a party or potential party —
  - (a) is bound by these rules;
  - (b) must do anything required by these rules to be done by the party or potential party; and
  - (c) may, for the benefit of the party or potential party, do anything permitted by these rules to be done by the party or potential party.

## **Part 5 — Applications and proceedings generally**

### **26. Making an application**

To make an application, a party must complete the approved form and file it with the Director.

### **27. Party may discontinue proceeding**

- (1) An applicant may discontinue the whole or part of a proceeding commenced by the applicant.
- (2) A discontinuance takes effect when —
  - (a) a notice of discontinuance in the approved form is filed with a dispute resolution authority and a copy of the notice is served on the other parties to the proceeding; or
  - (b) a dispute resolution authority makes a consent order effecting the discontinuance,

whichever occurs first.

- (3) Subject to Part XV Division 2 of the Act an arbitrator may make an order as to costs in a proceeding that has been discontinued.

*[Rule 27 amended in Gazette 6 Nov 2009 p. 4453.]*

### **28. Adjournment of proceeding**

- (1) A proceeding may be adjourned by order of a dispute resolution authority and not otherwise.
- (2) A dispute resolution authority is not to adjourn a proceeding unless it is demonstrated that one or more of the parties would be significantly prejudiced if the adjournment were not granted.
- (3) A dispute resolution authority is not to adjourn a proceeding indefinitely unless there are exceptional circumstances that justify such an adjournment and those circumstances are recorded in the certificate of outcome or other formal record of the order.

*[Rule 28 amended in Gazette 6 Nov 2009 p. 4453; 11 Dec 2009 p. 5063.]*

**29. Application for adjournment**

- (1) An application for adjournment must —
  - (a) specify the reason why the adjournment is sought; and
  - (b) be accompanied by documents (such as medical certificates) that support the reason for seeking the adjournment.
- (2) Subject to rule 30, an order for adjournment will not be made if the application is made later than 5 days before the day on which the proceeding sought to be adjourned is scheduled to be before an arbitrator.

**30. Late application for adjournment**

- (1) An order may be made in respect of an application for adjournment that is made later than the time specified in rule 29(2) if the arbitrator is satisfied that there are exceptional circumstances that justify the making of the order.
- (2) The arbitrator may consider the application at any time after it is made or on the day on which the proceeding sought to be adjourned is before the arbitrator.

**31. Application may be dismissed or determined if adjournment not granted**

- (1) If an application for an order to adjourn a proceeding is not determined before the day on which the proceeding sought to be adjourned is before the arbitrator, the parties and their representatives are to attend on that day ready to proceed.
- (2) If an applicant is not ready to proceed on the day a proceeding comes before an arbitrator the applicant will be required to show —

- (a) why the applicant is not ready to proceed on that day;  
and
  - (b) why the proceeding should not be dismissed or finally determined on that day.
- (3) If a party other than the applicant is not ready to proceed on the day an application comes before an arbitrator the party will be required to show why the proceeding should not be finally determined on that day.

**32A. Interlocutory applications**

- (1) In this rule —  
*interlocutory application* means any of the following —
- (a) an application for leave to amend a document;
  - (b) an application for leave to file a late document;
  - (c) an application for leave to file late evidence;
  - (d) an application for leave to join a party;
  - (e) an application for leave to adduce oral evidence;
  - (f) an application for leave to produce an additional expert witness report;
  - (g) an application for leave to call oral evidence from a medical practitioner;
  - (h) an application for an adjournment;
  - (i) an application for an order for costs, or the assessment of costs, made in existing proceedings;
  - (j) a request for an arbitrator to issue an order under section 193 of the Act for the production of documents or material;
  - (k) any other application or request for an order, except an order that finally determines a dispute between parties.
- (2) An interlocutory application must be made in the approved form or in a manner approved by the dispute resolution authority to which the application is made.

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- (3) Except as permitted under subrule (4), a party must not file an interlocutory application unless —
  - (a) the party has conferred with each other party affected by the application with a view to resolving the matters giving rise to the application; and
  - (b) the application is endorsed with, or is filed together with a document containing, a statement, signed by the party or the party's legal practitioner or registered agent, to the effect that the conferral under paragraph (a) has taken place.
- (4) A dispute resolution authority may permit an application to be filed without the conferral referred to in subrule (3)(a) if it is of the view that there are exceptional circumstances justifying the filing of the application without the conferral.

*[Rule 32A inserted in Gazette 6 Nov 2009 p. 4453-5.]*

**32. Consent orders**

- (1) Where the parties, or some of the parties, to a proceeding in respect of a dispute —
  - (a) agree as to the terms of an order to be made in relation to, or determining, the dispute; and
  - (b) file with the Director a memorandum in the approved form setting out the terms of the order and signed by each of the parties,an arbitrator may make that order.
- (2) The arbitrator may make the order by signing the memorandum filed under subrule (1)(b).
- (3) Subrule (1) does not empower an arbitrator to make an order that the arbitrator would not otherwise have power to make under the Act or these rules.

*[Rule 32 amended in Gazette 6 Nov 2009 p. 4455.]*

**33. Hearings to be held in private**

A hearing or conference before an arbitrator is to be conducted in private unless the arbitrator decides that it should be conducted in public.

*[Rule 33 inserted in Gazette 6 Nov 2009 p. 4455.]*

## **Part 6 — Interim orders and minor claims**

### **Division 1 — Interim payment order**

#### **34. Documents to accompany application for interim payment order**

- (1) An application under section 231(1) of the Act must be accompanied by the following documents —
  - (a) a copy of the claim for compensation referred to in section 231(1)(a) of the Act;
  - (b) a copy of the certificate served on the employer under section 231(1)(b) of the Act;
  - (c) a statement signed by the applicant confirming that the claim for compensation and medical certificate have been served on the employer.
- (2) An application under section 231(2) of the Act must be accompanied by the following documents —
  - (a) a copy of the claim for compensation referred to in section 231(2)(a) of the Act;
  - (b) a copy of the certificate served on the employer under section 231(2)(b) of the Act;
  - (c) a statement signed by the applicant confirming that the claim for compensation and medical certificate have been served on the employer.
- (3) The application may be accompanied by such other documents and information as are relevant to the application.

#### **35. Service of application for interim payment order**

An application under section 231(1) and (2) of the Act must be served on the other parties and the employer's insurer, in accordance with rule 14(1), within 5 clear days after the day on which it is accepted by the Director.

*[Rule 35 amended in Gazette 26 May 2006 p. 1893.]*

**36. Submission by party or other person**

A party or persons served with a copy of an application under section 231(1) or (2) of the Act must file a notice in the approved form consenting to or disputing liability for an interim payment no later than 5 clear days after service of the application.

*[Rule 36 amended in Gazette 26 May 2006 p. 1893.]*

**37. Circumstances in which an interim payment order for weekly payments is not to be made: section 232(3)(c)**

For the purposes of section 232(3)(c) of the Act the following circumstances are prescribed as circumstances in which an interim payment order for weekly payments is not to be made —

- (a) the arbitrator is satisfied that —
  - (i) the applicant has, without reasonable excuse, refused or failed to participate in a return to work program established for the applicant under section 155C(1) of the Act in relation to the injury for which the claim for compensation is made; and
  - (ii) the establishment, content and implementation of the return to work program are in accordance with the code of practice (injury management) issued under section 155A(1) of the Act;
- (b) the applicant has been paid the prescribed amount in full in relation to the claim for compensation; or
- (c) the arbitrator is of the opinion that the applicant is not making proper endeavours to facilitate the efficient resolution of the dispute between the parties.

**38. Content of interim payment order**

An interim payment order must contain the following information —

- (a) whether the order is for the payment of weekly payments or statutory expenses, or both;
- (b) the name of the employer ordered to pay the weekly payments or statutory expenses;
- (c) the name and address of the worker to whom the weekly payments or statutory expenses are to be paid;
- (d) if the order is for the payment of weekly payments and it is appropriate, the dates on which the payments are to commence and conclude;
- (e) if the order is for the payment of statutory expenses, a schedule setting out —
  - (i) the amount to be paid;
  - (ii) details of the service provider; and
  - (iii) the service provided or to be provided;
- (f) advice that the order may be revoked under section 237 of the Act at any time and that, upon revocation, the obligation to pay compensation under the order ceases;
- (g) the conditions, if any, to which the order is subject.

**39. Revocation of interim payment order: section 237**

- (1) An application for the revocation of an interim payment order under section 237 of the Act must state the reason for revoking the interim payment order and must be served on the other parties in accordance with rule 14(1) within 5 clear days of the day on which it is accepted by the Director.
- (2) The application may be accompanied by any document that is relevant to the application.
- (3) A party or persons served with an application for revocation of an interim payment order must file a notice in the approved

form consenting to the application or opposing it within 5 clear days of service.

- (4) If an arbitrator revokes an interim payment order, the arbitrator must give a written notice of that revocation to each of the parties to the proceeding.

*[Rule 39 amended in Gazette 26 May 2006 p. 1893.]*

## **Division 2 — Interim suspension or reduction order**

### **40. Term used: Part XI application**

In this Division —

**Part XI application** has the meaning given to that term in section 238(1)(a) of the Act.

### **41. Application for interim suspension or reduction order**

An application under section 238(1) of the Act —

- (a) must set out the grounds upon which the suspension or reduction of weekly payments is sought;
- (b) must identify the Part XI application commenced in respect of the same matter as the application under section 238(1) of the Act; and
- (c) must then be accompanied by such other documents and information as are relevant to the application.

### **42. Service of application for interim suspension or reduction order**

An application under section 238(1) of the Act must be served on —

- (a) the other parties;
- (b) the employer's insurer, unless made by an insurer,

in accordance with rule 14(1) within 5 clear days after the day on which it is accepted by the Director.

*[Rule 42 amended in Gazette 26 May 2006 p. 1893-4.]*

**43. Submission by party or other person**

A party or persons served with an application under section 238(1) of the Act must, within 5 days of the service, file a notice in the approved form consenting to, or opposing, the application.

*[Rule 43 amended in Gazette 26 May 2006 p. 1894.]*

**44. Arbitrator may consider Part XI application**

Before making an order under section 238(2) of the Act the arbitrator must have regard to any material filed with the relevant Part XI application.

**45. Circumstances in which an interim suspension or reduction order is not to be made: section 238(4)(b)**

For the purposes of section 238(4)(b) of the Act the following circumstances are prescribed as circumstances in which an interim suspension order or interim reduction order is not to be made —

- (a) the arbitrator is satisfied that —
  - (i) a return to work program is required under section 155C of the Act to be established for the worker; and
  - (ii) the applicant has failed to establish the return to work program or has failed to establish or implement it in accordance with the code of practice (injury management) issued under section 155A(1) of the Act;
- (b) the arbitrator has reason to believe that the determination of the relevant Part XI application will be delayed unreasonably; or
- (c) the arbitrator is not satisfied that the applicant for the interim suspension order or interim reduction order is making proper endeavours to facilitate the resolution of the dispute between the parties.

**46. Content of interim suspension or reduction order**

An interim suspension order or an interim reduction order must contain the following information —

- (a) the name of the party to whom it is addressed;
- (b) in the case of an interim suspension order, the date on which the suspension is to commence;
- (c) in the case of an interim reduction order, the reduced weekly payment, and the date on which the reduction is to commence;
- (d) advice that the suspension or reduction of weekly payments may be tested in the relevant Part XI application and that the order may be revoked under section 240 of the Act.

**47. Revocation of interim suspension or reduction order: section 240**

- (1) An arbitrator may revoke an interim suspension order or an interim reduction order on application or on the arbitrator's own motion.
- (2) An application for revocation of an interim suspension order or an interim reduction order under section 240 of the Act must state the reason the revocation of the interim suspension order or interim reduction order is sought.
- (3) The application may be accompanied by any document that is relevant to the application.
- (4) An applicant for revocation of an interim suspension order or an interim reduction order must serve a copy of that application on all other parties and the employer's insurer within 5 clear days of the day on which it is filed.
- (5) A party or person served with an application for revocation of an interim suspension order or an interim reduction order must

file and serve a notice in the approved form consenting to, or opposing the revocation within 5 clear days of service.

- (6) If an arbitrator revokes an interim suspension order or an interim reduction order, the arbitrator must give a written notice of that revocation to each of the parties to the proceeding.

*[Rule 47 amended in Gazette 26 May 2006 p. 1894.]*

### **Division 3 — Minor claims**

#### **48. Material to accompany application for determination of minor claim: section 241**

- (1) An application for an order under section 241(1) or (2) of the Act must be accompanied by —
- (a) a copy of the relevant notice of injury served on the employer under section 179 of the Act;
  - (b) a copy of the relevant claim made on the employer in accordance with section 178(1)(b) of the Act and regulation 6AA of the *Workers' Compensation and Injury Management Regulations 1982*;
  - (c) a copy of the relevant medical certificate referred to in section 241(1)(b) or 241(2)(b), as the case requires, of the Act; and
  - (d) if the application is the first in respect of the relevant injury, a statement by the worker verifying that the notice, claim and certificate have been made or served in accordance with the Act.
- (2) The application may be accompanied by such other documents and information as are relevant to the application.

*[Rule 48 amended in Gazette 26 May 2006 p. 1894.]*

#### **49. Application for production of documents: section 244**

An application for an order under section 244 of the Act must include —

- (a) a description of any document, material or information sought; and
- (b) a statement detailing who has possession of the document, material or information.

**50. Service of application for determination of minor claim**

An application under section 241(1) or (2) or 244 of the Act must be served on the other parties and the employer's insurer, in accordance with rule 14(1), within 5 clear days after the day on which it is filed.

*[Rule 50 amended in Gazette 26 May 2006 p. 1894.]*

**51. Submission by party or other person**

Any party or person served with an application for an order under section 241 or 244 of the Act must file a notice in the approved form consenting to, or opposing, the application within 5 clear days of service.

*[Rule 51 amended in Gazette 26 May 2006 p. 1894.]*

**52. Circumstances in which an order for weekly payments is not to be made: section 241(4)(c)**

For the purposes of section 241(4)(c) of the Act an order for weekly payments of compensation is not to be made under section 241 of the Act if the arbitrator is satisfied that —

- (a) the applicant has, without reasonable excuse, refused or failed to participate in a return to work program established for the applicant under section 155C(1) of the Act in relation to the injury for which the claim for compensation is made; and
- (b) the establishment, content and implementation of the return to work program are in accordance with the code of practice (injury management) issued under section 155A(1) of the Act.

**53. Content of order under section 241**

An order made under section 241 of the Act must contain the following information —

- (a) whether the order is for the payment of weekly payments or statutory expenses, or both;
- (b) the name of the employer ordered to pay the weekly payments or statutory expenses;
- (c) the name and address of the worker to whom the weekly payments or statutory expenses are to be paid;
- (d) if the order is for the payment of weekly payments, the number of weeks for which those payments are to be paid;
- (e) if the order is for the payment of statutory expenses, a schedule setting out —
  - (i) the amount to be paid;
  - (ii) details of the service provider; and
  - (iii) the service provided or to be provided.

**54. Order for production of documents: section 244**

An order under section 244 of the Act as to the production of a document, material or information must specify —

- (a) the date and time on or by which the document, material or information is to be produced; and
- (b) the place at which, and person to whom, the document, material or information is to be produced.

## **Part 7 — Part XI proceedings**

### **Division 1 — Requirements before commencing proceeding**

**55. Provision of documents before commencement of proceeding**

- (1) A request under section 180(2) or (3) of the Act must be made by written request served on the employer, insurer or WorkCover WA, as the case requires.
- (2) The request must be complied with within 7 days of the request being served.

### **Division 2 — Commencing proceedings**

**56. Application for order as to total liability or payment of additional expenses**

An application by a worker for —

- (a) an order as to total liability under section 217 of the Act; or
- (b) an order as to the payment of additional expenses under clause 18A(1), (1a) or (1b),

must be accompanied by a statement in the approved form setting out the worker's financial circumstances and reasonable financial needs.

**57. Employer to advise worker of insurer**

- (1) If an application is made for a determination of a dispute, any employer who is a party to the proceeding must, if requested in writing by a party to the proceeding, advise the party of the name of the employer's insurer.
- (2) The name of the employer's insurer must be served on the party within 7 days of the request being made.

**58. Material to be filed and served with application**

- (1) An applicant for determination of a dispute must —
  - (a) file with the application; and
  - (b) serve on each person on whom a copy of the application is required under section 182 of the Act to be served,  
  
copies of all documents, material and information, whether issued under the Act, regulations made under the Act or otherwise, that the applicant proposes to adduce in evidence in the determination of the dispute.
- (2) Without limiting subrule (1), the documents, material and information referred to in that subrule include —
  - (a) certificates, reports and a list of the names of medical practitioners consulted;
  - (b) reports of approved vocational rehabilitation providers;
  - (c) statements of the substance of any expert evidence, other than evidence referred to in paragraph (a); and
  - (d) the witness statements referred to in rule 89(1), and statements referred to in rule 89(2).
- (3) If the applicant proposes to adduce a document or other material or information but is unable to file the document, material or information in accordance with subrule (1), the application must specify in detail —
  - (a) the document, material or information that the applicant intends to adduce; and
  - (b) the reason why that document, material or information cannot be filed with the application.
- (4) The applicant must —
  - (a) file copies of any document, material or information specified in an application in accordance with subrule (3) with the Director; and

- (b) serve copies of the document, material or information to each person on whom a copy of the application is required under section 182 of the Act to be served,

not less than 14 days, or any shorter period specified in the practice notes, before the conciliation conference held under rule 69 in respect of the proceeding.

- (5) Subrules (3) and (4) do not apply in respect of —

- (a) an application under section 60 of the Act for an order that weekly payments be discontinued or reduced;
- (b) an application under section 62 of the Act for the review of weekly payments; or
- (c) an application under section 71 of the Act for the refund of compensation or expenses; or
- (d) an application under section 72A of the Act for an order that weekly payments be suspended or discontinued,

and no document, material or information other than documents, material and information filed under subrule (1) may be admitted in evidence on behalf of the applicant in such a proceeding.

*[Rule 58 amended in Gazette 26 May 2006 p. 1894; 6 Nov 2009 p. 4456.]*

## **59. Reply to application**

- (1) A party who has been served with an application must —
  - (a) in the case of an application made by an employer under section 60 or 62 of the Act, file a reply to the application with the Director within 21 days from the day on which the application is served on the party; and
  - (b) in the case of any other application for determination of a dispute, file a reply to the application with the Director within 14 days from the day on which the application is served on the party.

- (2) The reply must be in the approved form.
- (3) The reply must —
  - (a) state concisely, but with full particularity —
    - (i) what parts of the application, if any, are admitted by the party;
    - (ii) what parts of the application, if any, are disputed by the party;
  - and
  - (b) give full particulars of the grounds on which the relevant parts of the application are disputed by the party and the issues for determination by the arbitrator.
- (4) If, under section 184 of the Act, an arbitrator refers an application or part of an application to be dealt with under Part XII, the arbitrator may direct that the requirement under this rule to file and serve a reply to the application is deferred until such time as the arbitrator determines.

*[Rule 59 amended in Gazette 6 Nov 2009 p. 4457.]*

**60. Procedure where party does not reply**

- (1) If a party on whom an application has been served fails to file a reply in accordance with these rules, the dispute in respect of which the application is made may be determined as if that party did not dispute any part of the application.
- (2) An arbitrator may make such orders as the arbitrator thinks fit to deal with the application.

**61. Material to be filed and served with reply**

- (1) A party on whom an application is served must —
  - (a) file with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,copies of all documents, material and information, whether issued under the Act, regulations made under the Act or

otherwise, that the party proposes to adduce in evidence in the determination of the dispute.

- (2) Without limiting subrule (1), the documents, material and information referred to in that subrule include —
- (a) certificates and reports of medical practitioners;
  - (b) reports of approved vocational rehabilitation providers;
  - (c) statements of the substance of any expert evidence, other than evidence referred to in paragraph (a);
  - (d) the witness statements referred to in rule 89(1), and statements referred to in rule 89(2).
- (3) If the party on whom an application is served is a worker, the party must —
- (a) file with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,

details of the name, address and field of practice of each medical practitioner who has examined or treated the worker in relation to the relevant injury and who is not mentioned in the documents accompanying the application.

- (4) If the party on whom an application is served is a worker and the application is made by an employer under section 60 or 62 of the Act, the party must —
- (a) file with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,

details of any forthcoming medical examinations of the worker for which an appointment has been made.

- (5) If the party proposes to adduce in evidence a document or other material or information but is unable to file the document, material or information in accordance with subrule (1), the reply must specify in detail —

- (a) the document, material or information that the party intends to adduce; and
  - (b) the reason why that document, material or information cannot be filed with the reply.
- (6) The party must —
- (a) file copies of any document, material or information specified in a reply in accordance with subrule (5) with the Director; and
  - (b) serve copies of the document, material or information on each person on whom a copy of the reply is required to be served,

not less than 14 days, or any shorter period specified in the practice notes, before the conciliation conference held under rule 69 in respect of the proceeding.

*[Rule 61 amended in Gazette 6 Nov 2009 p. 4457-8;  
11 Dec 2009 p. 5063.]*

**62. Response by applicant**

- (1) Except as provided in subrule (2A), where a reply to an application raises issues not raised in the application, the applicant may, within 14 days of being served with the reply, file with the Director a response limited to those issues and serve on the other parties a copy of the response.
- (2A) An applicant under section 60 or 62 of the Act cannot file a response under subrule (1) without leave from an arbitrator.
- (2B) An arbitrator is to give the leave referred to in subrule (2A) only if he or she thinks it is necessary in the interests of justice.
- (2) The response must be in the approved form.
- (3) A response under subrule (1) must not raise issues different from the issues raised by the application in the proceeding or the reply to the application.

*[Rule 62 amended in Gazette 6 Nov 2009 p. 4458.]*

**63. Material to be filed and served with response**

- (1) A party on whom a reply is served must —
- (a) file with the party's response; and
  - (b) serve on each party on whom a copy of the response is served,

copies of any further documents, material and information, whether issued under the Act, regulations made under the Act or otherwise, that the party proposes to adduce in evidence in the determination of the dispute and which were not filed with the documents accompanying the application.

- (2) Documents, material and information filed under subrule (1) must be relevant to the response.
- (3) If the party proposes to adduce in evidence a document or other material or information that is of a type that could be filed under rule 61(1) but is unable to file the document, material or information, the response must specify in detail —
- (a) the document, material or information that the party intends to adduce; and
  - (b) the reason why that document, material or information cannot be filed with the response.
- (4) The party must —
- (a) file copies of any document, material or information specified in a response in accordance with rule 61(5) with the Director; and
  - (b) serve copies of the document, material or information on each person on whom a copy of the response is required to be served,

not less than 14 days, or any shorter period specified in the practice notes, before the conciliation conference held under rule 69 in respect of the proceeding.

*[Rule 63 amended in Gazette 6 Nov 2009 p. 4458-9;  
11 Dec 2009 p. 5063.]*

**64. Filing of late documents**

- (1) In any proceeding under the Act and these rules any document not filed within the time limits prescribed in these rules must not be adduced in evidence in the proceeding by any party to the proceeding without first obtaining the leave of the arbitrator.
- (2) An arbitrator will only give the leave if —
  - (a) no other party is prejudiced by the relevant document being adduced in evidence; or
  - (b) in any event, the other parties consent to it being adduced; or
  - (c) in the opinion of the arbitrator the document is required to be admitted in evidence in the proceedings in the interests of justice.

*[Rule 64 amended in Gazette 6 Nov 2009 p. 4459.]*

**65. Submission by party or other person**

- (1) Where a party or person is served with an application to adduce in evidence in any proceeding a document that has not been filed and served in accordance with these rules, the person or party upon whom the application is served must, within 5 clear days of the service, file and serve a notice consenting to, or opposing, the application.
- (2) If a notice is filed opposing the application, the notice must state the grounds on which the application is opposed.

*[Rule 65 amended in Gazette 26 May 2006 p. 1894; 6 Nov 2009 p. 4459.]*

### **Division 3 — Conciliation and determination of dispute**

#### **66. Conciliation teleconference**

- (1) An arbitrator may, at any time, direct the parties to participate in a conciliation teleconference conducted by an arbitrator at a time specified in the direction.
- [(2) deleted]*
- (3) Notice of the direction must be given by an arbitrator to each party to the proceeding.
- (4) Unless an arbitrator otherwise orders —
  - (a) a party given notice of the direction must be available in person to participate in the teleconference at the time specified in the notice; and
  - (b) the party must attend in person or, if a body corporate, by an authorised officer authorised to negotiate and, if appropriate, agree, terms of settlement.

*[Rule 66 amended in Gazette 6 Nov 2009 p. 4460.]*

#### **67. Outcome of conciliation teleconference**

- (1) If the dispute is not settled at the conciliation teleconference the arbitrator who conducted the teleconference must issue a certificate of outcome that states the matters remaining in dispute between the parties and any issues —
  - (a) in relation to the application, reply and response, if any; or
  - (b) raised at the teleconference.
- (2) The parties are bound by the certificate of outcome and may not assert to the contrary except with the leave of an arbitrator.

*[Rule 67 amended in Gazette 6 Nov 2009 p. 4460.]*

**68. Arbitrator must not interview individual parties or witnesses**

With the exception of medical witnesses, an arbitrator must not confer with or interview a party or a witness in relation to a proceeding except at a conference between the parties or at a hearing.

**69. Conciliation conference**

- (1) In the event there is no teleconference, or a dispute is not settled by teleconference, an arbitrator must list the dispute for a conciliation conference.
- (2) Additionally, an arbitrator may list a dispute for a hearing with the approval of the Director.
- (3) If an arbitrator lists a dispute for a conciliation conference, the arbitrator must, by written notice, direct the parties to attend the conciliation conference.
- (4) The notice must set out the time and place for the conciliation conference.
- (5) Unless an arbitrator otherwise orders, a party must attend a conciliation conference in person or, if a body corporate, by an authorised officer authorised to negotiate and, if appropriate, agree, terms of settlement.
- (6) An arbitrator may, in the arbitrator's absolute discretion, adjourn a conference from time to time or to another arbitrator as the justice of the case may require.

**70. Statement as to agreed facts and issues**

- (1) An arbitrator may order the parties to a proceeding to file a joint signed statement setting out the facts and issues on which the parties agree, and the facts and issues that are in dispute.

- (2A) The statement may, at the discretion of the arbitrator, be either in the form of a single document or a separate document for each party.
- (2) The parties are bound by the statement and may not assert the contrary, except with the leave of an arbitrator.  
*[Rule 70 amended in Gazette 6 Nov 2009 p. 4460.]*

**71. Determination by arbitrator**

- (1) If the dispute is not settled at the conciliation conference, the arbitrator may direct that the proceeding is to be heard and determined by an arbitrator.
- (2A) The arbitrator is to give to each party written notice of the direction and of the time and place of the hearing.
- (2) Nothing in these rules prevents an arbitrator from hearing or determining a proceeding in relation to an application on the same day as a conciliation conference has been held in respect of the application, should the justice of the case permit it.
- (3) The hearing, if any, of the proceeding should commence within such time as is specified in a practice note issued under section 294 of the Act.
- (4) Unless the arbitrator expressly directs otherwise, each party must, at the start of the hearing, give to the arbitrator and every other party an index of the documents that the party intends to adduce in evidence at the hearing.
- (5) An arbitrator at a hearing is to record the documents that are admitted in evidence.  
*[Rule 71 amended in Gazette 6 Nov 2009 p. 4460-1.]*

**Division 4 — Section 93D disputes**

**72. Certain rules do not apply to section 93D disputes**

Rules 12, 21(1), 26, 58, 59 and 66 do not apply to or in relation to an application that is taken to have been made under section 93D(10) of the Act.

**73. Exchange of information in relation to dispute referred but not listed before 14 November 2005**

- (1) This rule applies to disputes —
  - (a) referred for resolution under section 93D(10) of the Act before 14 November 2005; and
  - (b) not listed before 14 November 2005 for a callover or review to be held after 14 November 2005.
- (2) On or before 5 p.m. on 2 January 2006 —
  - (a) the worker must file with the Director and serve on the employer copies of all documents, material and information on which the worker proposes to rely in the determination of the dispute; and
  - (b) the employer must file with the Director and serve on the worker copies of all documents, material and information on which the employer proposes to rely in the determination of the dispute.
- (3) The documents, material and information are to include, but are not limited to, documents, material and information of the kind referred to in rule 58(2).

**74. Material to be filed by worker in dispute not referred before 14 November 2005**

- (1) This rule applies to disputes mentioned in section 93D(8) of the Act that on 14 November 2005 have not been referred for resolution under section 93D(10) of the Act.

- (2) Not later than 42 days after the day on which a dispute arises under section 93D(8) of the Act the worker must file with the Director and serve on the employer copies of all documents, material and information that the worker proposes to adduce in evidence in the determination of the dispute.
- (3) The documents, material and information are to include, but are not limited to, documents, material and information of the kind referred to in rule 58(2).

*[Rule 74 amended in Gazette 6 Nov 2009 p. 4461; 11 Dec 2009 p. 5063.]*

**75. Reply by employer**

- (1) An employer who is served with documents, material or information under rule 74(2) must file a reply with the Director.
- (2) The reply must be —
  - (a) filed within 42 days of the employer being served with the documents, material or information; and
  - (b) served on the worker within 7 days of being filed.
- (3) The reply must state concisely, but with full particularity the issues disputed by the employer and the grounds upon which each issue is disputed.

*[Rule 75 amended in Gazette 6 Nov 2009 p. 4461.]*

**76. Material to be filed and served with reply**

- (1) An employer who files a reply under rule 75 must also file and serve on the worker copies of all documents, material and information that the employer proposes to adduce in evidence in the determination of the dispute.
- (2A) The documents, material or information referred to in subrule-(1) must be filed together with the reply.

- (2) The documents, material and information are to include, but are not limited to, documents, material and information of the kind referred to in rule 61(2).

*[Rule 76 amended in Gazette 6 Nov 2009 p. 4461; 11 Dec 2009 p. 5064.]*

**77. Conciliation teleconference**

- (1) After the time for serving material, information and documents under rule 74 has elapsed the Director may direct the parties to participate in a conciliation teleconference conducted by an arbitrator at a time specified in the direction.
- (2) The conciliation teleconference must be listed for a date that is after the date on which the reply under rule 75 should have been made.
- (3) Notice of the direction must be given by the Director to each party to the proceeding.
- (4) Unless an arbitrator otherwise orders —
- (a) a party given notice of the direction must be available in person to participate in the teleconference at the time specified in the notice; and
  - (b) the party must attend in person or, if a body corporate, by an authorised officer authorised to negotiate and, if appropriate, agree, terms of settlement.

**78. Leave for late filing**

Nothing in this Division affects the operation of rule 64.

## **Part 8 — Joinder of parties**

### **79. Arbitrator may give leave to join another party**

An arbitrator may, on the application of a party to a proceeding or on the arbitrator's own initiative, order that another person be joined as a party to a proceeding and following the joinder the arbitrator may make such further orders as the arbitrator thinks fit.

### **80. Notice of joinder**

- (1) If, on an application under rule 79 by a party to a proceeding, an arbitrator orders that another person be joined as a party to a proceeding, the party that made the application must, within 7 days of the order, serve on the person being joined and, if the person joined is an employer but not a self-insurer, the employer's insurer —
  - (a) written notice advising the person of the joinder and of the time in which the person may file and serve a reply (14 days after service of the notice);
  - (b) a copy of the application for the proceeding, the reply to the application and the response to the reply; and
  - (c) copies of any documents, material and information that were filed with the application, reply or response.
- (2) If a person is joined as a party to a proceeding under rule 79 by an arbitrator on the arbitrator's own initiative, the Director must serve on the person the notice and documents referred to in subrule (1).
- (3) If the person joined under subrule (2) is an employer (but not a self-insurer) the notice must be served on both the employer and, if known to the Director, the employer's insurer.

*[Rule 80 amended in Gazette 26 May 2006 p. 1895.]*

**81. Reply by person joined**

- (1) A person who is joined as a party to a proceeding may, within 14 days of being served with notice under rule 80, file with the Director and serve on the other parties to the proceeding a reply to the notice.
- (2) A person who is joined as a party to a proceeding and who wishes to object to the joinder must include in the reply under subrule (1) the reasons why the person should not properly be included as a party to the proceeding.
- (3) Rule 61 applies to a reply under this rule.

*[Rule 81 amended in Gazette 26 May 2006 p. 1895.]*

## **Part 9 — Disclosure of documents and information**

### **82. Duty of disclosure**

For the purposes of this Part, a duty of disclosure applies to each document that —

- (a) is or has been in the possession, or under the control, of the party to a proceeding on whom a request is served under rule 83;
- (b) is relevant to an issue in the proceeding; and
- (c) is not a document the party is excused from producing under section 206 of the Act.

### **83. Disclosure without order**

- (1) A party (the *requesting party*) may, by notice in writing served on another party, request the other party to serve on the requesting party a list of documents to which the duty of disclosure applies.
- (2) A party is not to give notice under subrule (1) until the time for filing a response has expired.
- (3) A party served with a notice under subrule (1) must, within 14 days of the service, serve on the requesting party a list specifying —
  - (a) the documents to which the duty of disclosure applies and which are in the possession, or under the control, of the party on whom the notice is served;
  - (b) the documents to which the duty of disclosure applies but which are not in the possession, or under the control, of the party on whom the notice is served (with a brief statement about the circumstances in which the documents left the party's possession or control); and
  - (c) the documents the party is excused from producing under section 206 of the Act.

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- (4) The party served with a notice under subrule (1) must, within 7 days of being so requested by the requesting party, serve on the requesting party a copy of any document mentioned in subrule (3)(a) or allow the requesting party to inspect the document.

**84. Orders relating to disclosure**

- (1) An arbitrator may order that —
- (a) a party must comply with a request for a list of documents under rule 83(1) or a request for production and inspection under rule 83(4);
  - (b) a party must file an affidavit as to —
    - (i) the documents that are in the possession or control of that party; or
    - (ii) the circumstances in which a specified document or class of documents that has been in the possession, or under the control, of the party ceased to exist or passed out of the possession of control of that party;
- and
- (c) a party is partly or fully excused from the duty to produce a document.
- (2) An affidavit under subrule (1)(b)(i) must state that, to the best of the deponent's knowledge and belief, every document required to be disclosed under rule 83 has been disclosed.
- (3) An affidavit under subrule (1)(b)(i) must be sworn by —
- (a) if the party is a natural person, by the person; or
  - (b) if the party is a corporation, by an appropriately authorised officer of the corporation.

**85. Request for order to produce documents (section 193)**

- (1) A party to a proceeding may, by filing a proposed order in the approved form with the Director, request an arbitrator to issue an order under section 193 of the Act for the production of documents or material.
- (2) If the arbitrator issues the order, it must be served by the person making the request on the person required to produce the document or material specified in the order and the other parties to the proceeding not less than 7 days before the day set in the order for the production of the documents or material.
- (3) The person required to produce the documents or material is not required to comply with the order if it is not served in accordance with subrule (2).

**86. Continuing obligation to disclose documents**

- (1) A party that has been requested under rule 83 or ordered under rule 84 to disclose documents is under a continuing obligation until the end of the proceeding to disclose any document to which the duty of disclosure applies that is not already disclosed by that party.
- (2) The party must disclose the document as soon as is practicable after the party becomes aware of the document.

**87. Order under rule 84 or section 193**

- (1) An arbitrator is not to exercise his or her powers under rule 84 and section 193 of the Act unless the arbitrator is satisfied that the order is necessary for the fair, just, economical, informal and quick resolution of the dispute.
- (2) In exercising his or her powers under rule 84 or section 193 of the Act the arbitrator may consider —
  - (a) whether the document or information sought is relevant to an issue in dispute;

- (b) the relative importance of the issue to which the document or information relates;
- (c) the likely time, cost and inconvenience involved in producing a document or providing information, taking into account the amount of the property, and the complexity of the corporate, trust or partnership interests (if any), involved in the application or proceeding; and
- (d) the likely effect on the outcome of the case of producing, or not producing, the document or information.

## **Part 10 — Witnesses**

### **88. Summons**

- (1) A summons issued under section 202 of the Act must be in the approved form.
- (2) If a summons is issued under section 202 of the Act on the request of a party to a proceeding, that party must serve the summons on the person whose attendance is required, not less than 7 days before the day on which the person is required to attend before the arbitrator.
- (3) The person to whom the summons is directed is not required to comply with the summons unless —
  - (a) the summons is served on the person in accordance with subrule (2); and
  - (b) any witness allowance for the expenses of attendance prescribed by the regulations is paid or tendered to the person at the time of service of the summons or not later than a reasonable time before the time at which the person is required to attend.

### **89. Witness statements**

- (1) If a party proposes to adduce oral evidence from a witness, the party must file with the Director and serve on the other parties with the documents filed and served by that party under rule 58(1), 61(1), 63(1) or 64 a document containing —
  - (a) the name of the witness; and
  - (b) a detailed statement of the evidence to be given by the witness, signed by the witness.
- (2) Subject to subrule (3) a witness cannot appear in a proceeding to give evidence unless the party calling that witness has filed and served with the documents filed and served by that party under

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rule 58(1), 61(1), 63(1) or 64 a statement that the arbitrator considers fully and properly specifies —

- (a) the substance of the evidence that the party calling the witness believes on reasonable grounds the witness will give;
  - (b) the reliance the party intends to place on the evidence;
  - (c) the reasons why the evidence has not been included in a statement as required by subrule (1); and
  - (d) the time the evidence is expected to be so included.
- (3) An arbitrator may allow a witness to appear who would otherwise be prevented from appearing under section 183(5) of the Act if the arbitrator considers that the evidence of the witness would assist in the determination of the dispute in a manner that is fair, just, economical, informal and quick.
- (4) If a party proposes to give oral evidence, this rule applies to that party as though the party were the party's witness as well as being the party.
- (5) A certificate, report or statement referred to in rule 58(2)(a), (b) or (c) or rule 61(2)(a), (b) or (c) is to be taken to be a statement of a witness for the purposes of section 183(5) of the Act and this rule.
- (6) If a statement required to be filed under subrule (1) or (2) makes reference to a document except a medical report to which rule 91 applies, then the document must not be adduced into evidence unless a copy of that document is attached to the statement or is, in the opinion of the arbitrator, otherwise sufficiently identified.

*[Rule 89 amended in Gazette 6 Nov 2009 p. 4462.]*

**90. Medical evidence**

- (1) Except with the leave of an arbitrator, any medical evidence of a medical practitioner must be given in writing and a medical practitioner may not be called to give oral medical evidence.
- (2) An application for leave to call oral evidence from a medical practitioner must —
  - (a) be made in the approved form not less than 14 days prior to the date set for the conciliation conference in relation to the proceeding; and
  - (b) state the grounds on which leave is sought.
- (3) An arbitrator is not to give leave to call oral medical evidence unless the arbitrator is satisfied that the giving of the evidence will assist in the determination of the dispute in a manner that is fair, just, economical, informal and quick.

**91. Medical reports**

- (1) Except with the leave of an arbitrator, in any proceeding —
  - (a) a medical report by a medical practitioner in a particular area of medical practice may not be filed or admitted in evidence on behalf of a party to the proceeding if another medical report by another medical practitioner in that area of medical practice has been filed or admitted in evidence on behalf of that party; and
  - (b) a medical report by a medical practitioner in a particular area of medical practice may not be filed or admitted in evidence on behalf of a party to the proceeding if medical reports in 3 areas of medical practice have been filed or admitted in evidence on behalf of that party.
- (2) For the purposes of this rule, a medical report in more than one area of medical practice is to be taken to be a medical report in each of those areas of medical practice.

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- (3) This rule does not affect the filing or admission in evidence of a medical report in a proceeding if the report was filed or admitted in the proceeding before the coming into operation of these rules.
- (4) This rule does not affect the filing or admission in evidence of a medical report required to be obtained because —
  - (a) an applicant worker's medical practitioner has ceased treating the worker by reason of retirement, change in practice or similar, and his or her medical practice has been taken over by another medical practitioner; or
  - (b) an applicant worker attends a general medical practice and is seen by more than one medical practitioner in that same practice, from time to time.

*[Rule 91 amended in Gazette 6 Nov 2009 p. 4462-3.]*

## **Part 11 — Referral of questions of law and appeals**

### **92. Application for leave to refer question of law**

- (1) An application for leave to refer a question of law under section 246(2) of the Act must include, or be accompanied by, a statement setting out —
  - (a) a statement of the question of law concerned;
  - (b) the grounds upon which the question of law is said to be novel or complex;
  - (c) a list of authorities relied upon in support of the grounds in paragraph (b); and
  - (d) a statement as to whether the matter can be determined on the papers, and if not why not.
- (2) If a party wishes to object to the application, the party may file with the Director notice of that objection.
- (3) A notice of objection must include a statement setting out the reasons for the objection in full.
- (4) If the Commissioner grants leave to refer a question of law, all parties may file with the Director submissions as to the question of law at the direction of the Commissioner.

### **93. Referral of question of law by arbitrator**

- (1) If an arbitrator, of the arbitrator's own motion, decides to refer a question of law for the determination of the Commissioner, the arbitrator must give the Commissioner notice of that decision.
- (2) The notice must include, or be accompanied by a statement setting out —
  - (a) a concise expression of the question of law; and
  - (b) a submission as to the reasons for referring the question, including reasons why it is alleged that the question involves a novel or complex question of law.

**94. Application for leave to appeal**

- (1) An appeal against a decision under section 247(1) of the Act must be commenced by filing with the Director an application for leave to appeal in the approved form.
- (2) The application must be accompanied by or contain —
  - (a) a copy of the decision appealed against;
  - (b) a statement setting out concisely each ground of appeal;
  - (c) a concise statement of the question of law involved;
  - (d) in the case of an appeal in which an amount of compensation is at issue, particulars of the criteria set out in section 247(a)(i)(I) and (II) of the Act;
  - (e) the grounds upon which leave should be granted;
  - (f) a list of authorities relied upon; and
  - (g) a submission as to whether the application for leave, and the appeal, can be determined on the papers, and if not why not.

*[Rule 94 amended in Gazette 16 Dec 2005 p. 6084.]*

**95. Reply to application**

- (1) A respondent who is served with an application for leave to appeal under section 247 of the Act must file with the Director a reply to the application in the approved form within 10 days from the day on which the application is served on the respondent.
- (2) The reply must be accompanied by or contain —
  - (a) in the case of an appeal in which an amount of compensation is at issue, a statement by the respondent admitting or disputing that the criteria set out in section 247(2)(a)(i)(I) and (II) of the Act have been satisfied; and
  - (b) a statement consenting to or opposing the grant of leave sought; and

- (c) a statement in answer to the applicant's statement of the question of law; and
- (d) a submission as to why leave should or should not be granted and the party's opinion on the question of law; and
- (e) a list of authorities relied upon to support the submission in paragraph (d); and
- (f) a submission as to whether the application for leave, and the appeal, can be determined on the papers, and if not why not; and
- (g) if the respondent intends to submit a ground for upholding the decision under appeal that was not relied upon by the arbitrator, a notice specifying that ground.

*[Rule 95 amended in Gazette 6 Nov 2009 p. 4463.]*

**96. Commissioner's decision**

- (1) The decision of the Commissioner as to whether leave to appeal is granted, and the reasons for that decision, are to be given in writing to the parties.
- (2) If the Commissioner gives leave to appeal, the Commissioner may —
  - (a) fix a date for the hearing of the appeal; or
  - (b) proceed immediately to determine the appeal with or without a hearing, or further hearing, as the case may be,

and in that case the application for leave to appeal is to be taken to be the notice of appeal.

**97. Amendment of grounds of appeal**

- (1) A party who seeks leave to amend or add to the grounds of appeal must —
  - (a) file the application with the Director; and

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- (b) serve a copy of the application on the other parties within 5 clear days of the application being filed.
- (2) The application must be accompanied by a statement of the grounds upon which the leave should be granted.
- (3) The Commissioner may, on such terms and conditions as the Commissioner thinks fit —
  - (a) on application made by the appellant before the hearing of the appeal; or
  - (b) on the hearing of the appeal,amend or add to, or grant leave to the appellant to amend or add to, the grounds of the appeal.

*[Rule 97 amended in Gazette 26 May 2006 p. 1895.]*

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## Part 12 — Costs

### 98. Term used: costs

In this Part —

*costs* has the meaning given to that term by section 261 of the Act.

### 99. Order as to costs

- (1) An application for an order as to costs must be made to the Director or the arbitrator, as the case requires, and must be accompanied by a statement of costs claimed.
- (2) The application must be accompanied by copies of any vouchers, accounts and receipts relevant to the costs claimed.

*[Rule 99 amended in Gazette 6 Nov 2009 p. 4464.]*

### 100. Application for assessment of costs

- (1) An application for the assessment of costs must be made to the Director or the arbitrator, as the case requires.
- (2) The application must be accompanied by copies of any vouchers, accounts and receipts relevant to the assessment of costs.

*[Rule ~~101~~100 amended in Gazette 6 Nov 2009 p. 4464.]*

### 101. Expenses of approved medical specialist panel or approved specialist rehabilitation assessment panel

If an arbitrator orders an employer to pay expenses connected with a referral to an approved medical specialist panel under section 31D(5) or 158C(3) of the Act or clause 18C(2), or expenses connected with a referral to a specialised retraining assessment panel under section 158D(3) of the Act, those expenses are to be the expenses certified in writing by the Director as the expenses connected with the referral.

## **Part 13 — Medical assessments panels and specialised retraining assessment panels**

### **Division 1 — Medical assessment panels**

#### **102. Form for requirement to attend**

The notice by which a medical assessment panel requires a worker to attend before it must be in the approved form.

#### **103. Time, date and place of meeting**

- (1) A medical assessment panel may determine the date, time and place at which the panel is to meet.
- (2) A medical assessment panel must notify the Director of any determination under subrule (1).
- (3) In determining the date and notifying the Director, sufficient time must be allowed to enable the Director, the worker and the employer to comply with these rules.

#### **104. Notification of meeting**

If a question in respect of a worker is referred to a medical assessment panel —

- (a) the worker must be notified of the time, date and place at which the panel is to meet to determine that question —
  - (i) in the form referred to in rule 102; or
  - (ii) by written notice given to the worker by the Director;
- and
- (b) the Director must give the employer of the worker written notice of the time, date and place at which the panel is to meet to determine that question.

**105. Giving documents to medical assessment panel**

- (1) Except when complying with a requirement under section 145D(2) of the Act, a worker, employer or insurer must not give any medical certificate, medical report or other document directly to a medical assessment panel.
- (2) An arbitrator who refers a question to a medical assessment panel must —
  - (a) give to the Director with the referral any medical certificates, medical reports or other documents that the arbitrator has that are relevant to the question to be determined; and
  - (b) give to the worker concerned and the employer of the worker a list of the documents given to the medical assessment panel under paragraph (a).
- (3) An arbitrator who refers a question to a medical assessment panel under clause 18A(2ab) must give to the Director with the referral any prescribed evidence referred to in clause 18A(2aa)(c)(ii) that has been produced to the arbitrator.
- (4) Subject to any determination under rule 106(3) the Director is to give the documents to the medical assessment panel.

**106. Objection to document being given to medical assessment panel**

- (1) The worker or the employer may file with the Director an objection to the Director giving a document to a medical assessment panel.
- (2) The objection must be filed not later than 7 days before the day on which the medical assessment panel is to meet to determine the question.
- (3) An arbitrator may determine whether a document in respect of which an objection has been filed under this rule is to be given to a medical assessment panel.

**Division 2 — Specialised retraining assessment panels**

**107. Form for request to attend**

The notice by which a specialised retraining assessment panel requests a worker, employer, insurer, medical practitioner or approved vocational rehabilitation provider to attend before it must be in the approved form.

**108. Time, date and place of meeting**

- (1) A specialised retraining assessment panel may determine the date, time and place at which the panel is to meet.
- (2) A specialised retraining assessment panel must notify the Director of any determination under subrule (1).
- (3) In determining the date and notifying the Director, sufficient time must be allowed to enable the Director, the worker and the employer to comply with these rules.

**109. Notification of meeting**

- (1) If a question as to whether a worker satisfies retraining criteria is referred to a specialised retraining assessment panel the worker, employer, insurer, medical practitioner and approved vocational rehabilitation provider concerned must be notified of the time, date and place at which the panel is to meet to determine that question.
- (2) The notice must be —
  - (a) in the form referred to in rule 107; or
  - (b) written notice given by the Director.

**110. Giving documents to specialised retraining assessment panel**

- (1) Except when complying with a requirement under section 146U(2) of the Act, a worker, employer, insurer, medical practitioner or approved vocational rehabilitation

provider must not give any document directly to a specialised retraining assessment panel.

- (2) An arbitrator who refers a question to a specialised retraining assessment panel must —
  - (a) give to the Director with the referral any documents that the arbitrator may have that are relevant to the question to be determined; and
  - (b) give to the worker in respect of whom the question is referred and the employer of the worker a list of the documents given to the specialised retraining assessment panel under paragraph (a).
- (3) Subject to any determination under rule 111(3), the Director is to give the documents to the specialised retraining assessment panel.

**111. Objection to document being given to specialised retraining assessment panel**

- (1) The worker in respect of whom a question is to be determined or the employer of the worker may file with the Director an objection to the Director giving a document to a specialised retraining assessment panel.
- (2) The objection must be filed not later than 7 days before the day on which the specialised retraining assessment panel is to meet to determine the question.
- (3) An arbitrator may determine whether a document in respect of which an objection has been filed under this rule is to be given to a specialised retraining assessment panel.

## **Part 14 — Miscellaneous**

### **112. Official seal of the DRD**

- (1) The DRD is to have a seal.
- (2) The seal is to be in a form or forms approved by the Commissioner and may be in an electronic form.
- (3) All courts and persons acting judicially are to take judicial notice of the seal of the DRD affixed to a document.
- (4) If the seal of the DRD is affixed to a document, a court or person acting judicially must presume that it was properly affixed unless the contrary is proved.

### **113. Use of seal**

The seal of the DRD must be affixed to —

- (a) all documents filed with or registered by the Director;
- (b) all notices given, or decisions made, by a dispute resolution authority; and
- (c) such other documents as are required to be sealed under these rules.

### **114. Form of documents**

- (1) The Commissioner may approve forms for use in the DRD.
- (2) Every document filed with or served on the Director must —
  - (a) be headed so as to identify clearly the proceeding to which the document relates and the nature and purpose of the document;
  - (b) be in the approved form and otherwise in substantial compliance with these rules, any practice direction, and any directions issued by the Commissioner; and
  - (c) be clearly written, typed or reproduced.

- (3) Where no form has been approved under this rule in respect of a document to be filed or served, the document must meet the requirements of the Director.

**115. Amendment of documents**

- (1) A dispute resolution authority may, on the application of a party to a proceeding before the dispute resolution authority, give the party leave to amend any document filed by the party in the proceeding if the dispute resolution authority considers the amendment to be necessary for the avoidance of injustice.
- (2) An amendment may be made at any stage of the proceeding and on such terms as the dispute resolution authority thinks fit

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## Notes

- <sup>1</sup> This [reprint](#) is a compilation [as at 19 February 2010](#) of the *Workers' Compensation (DRD) Rules 2005* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Workers' Compensation (DRD) Rules 2005</i>	4 Nov 2005 p. 5353-418	14 Nov 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657)
<i>Workers' Compensation (DRD) Amendment Rules 2005</i>	16 Dec 2005 p. 6083-4	16 Dec 2005
<i>Workers' Compensation (DRD) Amendment Rules 2006</i>	26 May 2006 p. 1892-5	26 May 2006
<b>Reprint 1: The <i>Workers' Compensation (DRD) Rules 2005</i> as at 5 Jun 2009</b> (includes amendments listed above)		
<i>Workers' Compensation (DRD) Amendment Rules 2009</i>	6 Nov 2009 p. 4447-64	r. 1 and 2: 6 Nov 2009 (see r. 2(a)); <del>Regulations of</del> <a href="#">Rules other</a> than r. 1 and 2: 7 Nov 2009 (see r. 2(b))
<i>Workers' Compensation (DRD) Amendment Rules (No. 2) 2009</i>	11 Dec 2009 p. 5062-4	r. 1 and 2: 11 Dec 2009 (see <del>r.</del> 2(a)); Rules other than r. 1 and 2: 12 Dec 2009 (see r. 2(b))

**[Reprint 2: The \*Workers' Compensation \(DRD\) Rules 2005\* as at 19 Feb 2010](#)** (includes [amendments listed above](#))

<sup>2</sup> [Repealed by the \*Workers' Compensation \(Conciliation and Review\) Repeal Rules 2005\*.](#)

<sup>3</sup> [Repealed by the \*Workers' Compensation \(Compensation Magistrate's Court\) Repeal Rules 2005\*.](#)