
JUSTICE

JU301

District Court of Western Australia Act 1969

District Court (Mandatory Testing Infectious Diseases) Appeal Rules 2016

Made by the judges of the District Court.

1. Citation

These rules are the *District Court (Mandatory Testing Infectious Diseases) Appeal Rules 2016*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Terms used

- (1) In these rules, unless the contrary intention appears —
Act means the *Mandatory Testing (Infectious Diseases) Act 2014*;
approved form means a form approved by the Court;
disease test order appeal means an appeal under Part 3 Division 5 of the Act.
- (2) Unless the contrary intention appears, a term used in these rules has the same meaning as it has in the *District Court Rules 2005*.

4. Non-application of *District Court Rules 2005 Part 6*

The *District Court Rules 2005 Part 6* does not apply to a disease test order appeal.

5. Nature of appeal

- (1) In this rule —
primary court, in relation to a disease test order appeal, means the court that made the relevant disease test order as defined in section 15 of the Act.
- (2) A disease test order appeal must be by way of a reconsideration of the evidence that was before the primary court unless the parties agree otherwise.
- (3) At the hearing of the appeal a party must not adduce evidence that was not adduced in the primary court except with the leave of the Court.

- (4) The Court is not to grant such leave unless satisfied there are special grounds for doing so.

6. Commencement of appeal

- (1) To commence a disease test order appeal the appellant must give a notice of appeal in an approved form.
- (2) Except as provided in rule 9, the notice must set out the grounds for the appeal in accordance with subrule (3).
- (3) The grounds of appeal in a notice of appeal must not merely allege that an appealable decision is against the weight of the evidence or that it is wrong in law, they must specify the particulars relied on to demonstrate that the decision is against the weight of the evidence or the specific reasons why it is wrong in law.

7. Giving notice of appeal

To give a notice of appeal for the purposes of subrule 6, the appellant must —

- (a) file the notice; or
- (b) give notice under rule 9(1).

8. Filing notice of appeal

- (1) In addition to the *District Court Rules 2005* Part 3 Division 2, the notice of appeal may be filed by an email sent to the relevant registry.
- (2) As soon as practicable after filing a notice of appeal, the appellant must —
 - (a) serve it on the respondent; and
 - (b) file a certificate of service in an approved form.
- (3) A notice of appeal given under rule 9(1) is taken to have been filed for the purposes of Part 3 Division 5 of the Act.

9. Notice of appeal outside business hours

- (1) When a registry is not open for business, an appellant may give a notice of appeal by calling the Court's emergency telephone number as shown on the Court's website.
- (2) If notice of appeal is given under subrule (1), the appellant is not required to comply with rule 6 except to the extent directed under subrule (3).
- (3) The Court may give directions as to —
 - (a) how and when the appellant is to specify the grounds for the appeal (including whether the appellant is required to prepare a notice of appeal in accordance with rule 6 and, if so, when that notice is to be given to the Court); and

- (b) how and when the appellant is to notify the respondent of the appeal, the grounds of the appeal and the date, time and place of the hearing of the appeal.

10. Hearing of appeal

- (1) The hearing of a disease test order appeal may, in accordance with directions of the Court, be held —
 - (a) at any place, including a place outside the Court's usual place of business; or
 - (b) by telephone.
- (2) The hearing of a disease test order appeal is not to be heard in open court and all persons other than a party to the appeal or the party's legal practitioner are to be excluded during the appeal, except as otherwise directed by the Court.

11. No fees

No fees are payable in relation to a disease test order appeal.

12. No costs

No costs are to be awarded in relation to a disease test order appeal.

Made by the Judges of the District Court.

His Honour K. F. SLEIGHT, Chief Judge of the District Court,
District Court of Western Australia.

Date: 25 November 2016.