
JUSTICE

JU301*

District Court of Western Australia Act 1969

District Court Amendment Rules (No. 3) 2011

Made by the Judges of the District Court.

1. Citation

These rules are the *District Court Amendment Rules (No. 3) 2011*.

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* (**gazettal day**);
- (b) rules 6, 7, 8, 9(1) and (2), 10, 11, 12, 13(3), (4), (5), (6) and (7) — on the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 13 comes into operation;
- (c) the rest of the rules — on the day after gazettal day.

3. Rules amended

These rules amend the *District Court Rules 2005*.

4. Rule 15 amended

In rule 15(4a) delete “party.” and insert:

party within 5 days after the date on which the party received that notice from the Court.

5. Rule 45E amended

After rule 45E(3) insert:

- (4A) If a party has filed an index under subrule (3) and —
 - (a) the party receives a written notification from an expert witness that the witness has changed his or her view expressed in a report included in the index; or

- (b) the party has changed his or her intention as to any report of an expert witness from that set out in the index,

the party must file and serve an amended index of the reports of any expert witness that the party intends to tender as evidence at trial and must do so —

- (c) in the case of a change of view, within 7 days of receiving the notification; or
- (d) in the case of a change of intention, immediately after the change of intention and in any event at least 14 days before the commencement of the trial.

6. Rule 49 amended

- (1) In rule 49 insert in alphabetical order:

WCIMA appeal means an appeal under the *Workers' Compensation and Injury Management Act 1981* section 247(1).

- (2) In rule 49 in the definition of *primary court* delete “decision.” and insert:

decision;

7. Rule 51 amended

- (1) In rule 51(1)(a) after “commence an appeal” insert:

(other than a WCIMA appeal)

- (2) After rule 51(3) insert:

(4A) To —

- (a) commence a WCIMA appeal to the Court against an appealable decision; and
- (b) make an application for leave under the *Workers' Compensation and Injury Management Act 1981* section 247(1),

the appellant must file a Form 8A (Appeal notice (WCIMA appeal)) that sets out the matters referred to in subrule (4B).

(4B) In Form 8A the appellant must state —

- (a) the question of law the subject of the appeal;
and
- (b) the error alleged to have been made by the
arbitrator; and
- (c) the decision that the appellant claims should be
made in relation to that question of law.

(3) In rule 51(4) after “An appeal notice” insert:

or an appeal notice (WCIMA appeal)

(4) In rule 51(6) after “When an appeal notice” insert:

or an appeal notice (WCIMA appeal)

8. Rule 52 amended

(1) In rule 52(2) after “after an appeal notice” insert:

or an appeal notice (WCIMA appeal)

(2) In rule 52(3) delete “copy of the appeal notice,” and insert:

copy of the appeal notice or an appeal notice (WCIMA appeal),

9. Rule 53 amended

(1) In rule 53(1) delete “appeal notice,” and insert:

appeal notice or an appeal notice (WCIMA appeal),

(2) In rule 53(2) delete “the appeal notice.” and insert:

the appeal notice or an appeal notice (WCIMA appeal).

(3) In rule 53(3) delete “Form 9” and insert:

Form 8

- (4) In rule 53(4) delete “The answer” and insert:

The Notice of respondent’s intention

10. Rule 55 amended

- (1) In rule 55(1) delete “appeal notice.” and insert:

appeal notice or an appeal notice (WCIMA appeal).

- (2) After rule 55(1) insert:

- (2) At the directions hearing a legally qualified registrar may grant leave under the *Workers’ Compensation and Injury Management Act 1981* section 247(1).

- (3) Before rule 55(3)(a) insert:

- (aa) granting leave under the *Workers’ Compensation and Injury Management Act 1981* section 247(6) or making an order under section 250(1) of that Act;

11. Rule 57 amended

- (1) In rule 57(2)(a) after “which an appeal” insert:

(other than a WCIMA appeal)

- (2) After rule 57(2) insert:

- (3) Before or during the hearing of a WCIMA appeal, the Court may —

- (a) grant leave under the *Workers’ Compensation and Injury Management Act 1981* section 247(1); or
(b) grant leave under section 247(6) or make an order under section 250(1) of that Act.

12. Rule 58A amended

(1) Delete rule 58A(1) and insert:

(1) At any time before an appeal is concluded, a party to an appeal may apply for an order in the appeal or an order amending or cancelling an order in the appeal in —

(a) a Form 8A (Appeal notice (WCIMA appeal));
or

(b) a Form 8 (Notice of respondent's intention); or

(c) a Form 9 (Application in an appeal).

(2) In rule 58A(2):

(a) delete "To make such an application, the party must file, and serve on each other party, a Form 9 (Application in an appeal) with —" and insert:

A party making an application under subrule (1) must file, and serve on each other party, together with the form by which the application is made —

(b) in paragraph (e) after "a judge" insert:

or legally qualified registrar

Note: The heading to amended rule 58A is to read:

Orders in appeals, applying for

13. Schedule 1 amended

(1) In Schedule 1 Form 1 delete "• *the [party] has complied with the *District Court Rules 2005* rule 45E; and".

(2) In Schedule 1 Form 6 after the row relating to Last date for appealing insert:

Date of filing	
----------------	--

(3) In Schedule 1 Form 7 delete "[date];" and insert:

[date]/appeal notice (WCIMA appeal) dated [date] ²;

(4) After note 1 of Note to Schedule 1 Form 7 insert:

2. Strike out whichever is inapplicable.

(5) After Schedule 1 Form 7 insert:

8A. Appeal notice (WCIMA appeal) (r. 51(4A))

District Court of Western Australia		Appeal No:
		Appeal notice (WCIMA appeal)
Parties	Appellant Respondent	
Primary court's decision		
Primary court	WorkCover WA Arbitration Service	
Case number		
Parties		
Date of decision		
Arbitrator		
Decision details ¹		
Appeal details		
Notice of appeal	The appellant applies for leave to appeal to the District Court against the above decision.	
Act that allows appeal	<i>Workers' Compensation and Injury Management Act 1981 (WCIMA)</i> section 247.	
Question of law ²		
Amount in issue ³		
Grounds of appeal ⁴	1.	
Decision sought ⁵	1.	
Leave	The appellant applies for leave to appeal under WCIMA section 247 on the ground that: ⁶	
Other orders	The appellant also seeks orders that: ⁷	
Notice to the respondent ⁸	<p>If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant.</p> <p>If you file a Form 8 you must attend a directions hearing at the time and place stated below.</p>	
Last date for appealing	Last date:	
Date of filing		
Directions hearing ⁹	Date:	Time:
	Place:	

Appellant's details for service ¹⁰		
Name	Fax No.:	
Street address		
Telephone		
Email address		
Reference No.		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 8A —

1. Examples:
 - Determination of liability in favour of the respondent.
 - Dismissal of application seeking determination of liability.
 - Orders for cessation/reduction of weekly payments.
 - Orders for recovery of payments made.
2. Specify question(s) of law the subject of the appeal.
3. This is the amount that will be used to determine whether leave is able to be granted under WCIMA section 247.
4. Set out the grounds in numbered paragraphs.
5. See rule 51(4B)(c).
6. Specify subsection(s) under which the application is made. The grounds for leave should be in numbered paragraphs.
7. For example, to adduce fresh or further evidence under WCIMA section 247(6) or a stay under section 250(1).
8. A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
9. The Court will complete this row when the appeal notice (WCIMA appeal) is filed.
10. If the appellant is represented by a lawyer, the appellant's details below must be the lawyer's. If the appellant is self-represented, the details must be the appellant's personal details.

(6) In Schedule 1 Form 8 after the row relating to Cross-appeal insert:

Other orders	The respondent also seeks orders that: ^{4A}
--------------	--

(7) After note 3 of Notes to Schedule 1 Form 8 insert:

4A. For possible orders see rule 57(2).

Date: 10 November 2011.

Judges' signatures:

Chief Judge P. D. MARTINO.

Judge M. J. BOWDEN.

Senior Judge A. D. FENBURY.

Judge C. P. STEVENSON.

Judge H. J. WISBEY.

Judge F. C. E. DAVIS.

Judge S. M. DEANE (QC).

Judge P. B. O'NEAL.

Judge P. R. EATON.

Judge S. E. STONE.

Judge P. P. McCANN.

Judge J. G. STAUDE.

Judge A. S. STAVRIANOU.

Judge R. E. BIRMINGHAM (QC).

Judge T. D. SWEENEY (SC).

Judge A. S. DERRICK (SC).

Judge B. J. H. GOETZE.

Judge J. C. CURTHOYS.

Judge R. E. KEEN.