

JU310*

District Court of Western Australia Act 1969

District Court Amendment Rules 2007

Made by the District Court Judges.

1. Citation

These rules are the *District Court Amendment Rules 2007*.

2. The rules amended

The amendments in these rules are to the *District Court Rules 2005*.

3. Rule 8 amended

Rule 8(2)(a), (b) and (c) are deleted and the following paragraphs are inserted instead —

“

- (a) conduct a case management hearing under Part 4 and make any order that may be made at such a hearing;
- (b) conduct a pre-trial conference under Part 4 and make any order that may be made at such a conference;
- (c) conduct a listing conference under Part 4 and make any order that may be made at such a conference;
- (d) during the conduct of a pre-trial conference or a listing conference, settle, sign and seal an order under the RSC Order 43 Rule 16;
- (e) at times other than during the conduct of a pre-trial conference or a listing conference, settle, sign and seal an order under the RSC Order 43 Rule 16 if the solicitors for the parties to proceedings have, under that rule, filed a written consent to the making of the order.

”.

4. Rule 9 amended

Rule 9(1) is amended by inserting after “a” —

“ legally qualified ”.

5. Rule 10 amended

Rule 10(1) is amended by inserting after “by a” —

“ legally qualified ”.

6. Rule 13 amended

Rule 13 is amended by deleting “Registrar, a” and inserting instead —

“ legally qualified Registrar, the ”.

7. Rule 14 amended

- (1) Rule 14(1) is amended by inserting after “where a” —

“ legally qualified ”.

- (2) Rule 14(2) is amended by deleting “For” and inserting instead —

“ Subject to rule 8, for ”.

8. Rule 15 amended

- (1) Rule 15(2) is amended by inserting after “Judge or” —

“ legally qualified ”.

- (2) After rule 15(4) the following subrule is inserted —

“

- (4a) On receiving notice from the Court of the date of the hearing of the appeal, a party who appeals under this rule must serve notice of the hearing date on each other party.

”.

- (3) Rule 15(5) is amended by inserting after “or” —

“ legally qualified ”.

9. Rule 16 amended

Rule 16(1) is repealed and the following subrule is inserted —

“

- (1) Not less than 7 days after an appeal is commenced, a legally qualified Registrar may summons the parties to the appeal to a directions hearing before a legally qualified Registrar.

”.

10. Part 3 heading amended

The heading to Part 3 is amended by deleting “General matters” and inserting instead —

“ **Filing and service of documents** ”.

11. Part 3 Division 1 repealed

Part 3 Division 1 is repealed.

12. Rule 21 amended

- (1) Rule 21(1) is repealed.

- (2) Rule 21(2) is amended by deleting “subrule (1)” and inserting instead —

“ the RSC Order 72 ”.

- (3) Rule 21(4) is repealed.

13. Rule 21A amended

Rule 21A is amended in the Table by deleting “rule 18” in each place where it occurs and inserting instead —

“ the RSC Order 71A ”.

14. Rule 22 amended

Rule 22 is amended by deleting “A person filing a summons to be dealt with in chambers must include either —” and inserting instead —

“

- (1) Before filing a summons to be dealt with in chambers the parties to the summons must, in good faith, attempt to resolve as many of the issues giving rise to the summons as possible.
- (2) A person filing a summons to be dealt with in chambers must include in the summons or file with the summons —

”.

15. Rule 23 amended

Rule 23 is amended in the definition of “mediator” by inserting after “means a” —

“ legally qualified ”.

16. Rule 24 amended

Rule 24(2) is amended as follows:

- (a) after paragraph (g) by inserting —

“

- (ga) direct that a party file and serve a concise statement of the issues of fact or law that the party contends will need to be determined at trial;
- (gb) direct that a party file and serve a chronology of events relevant to the party’s case;
- (gc) dispense with a requirement to file and serve a document under Part 4A, or alter the day on or by which a party must comply with such a requirement;

”;

- (b) by deleting paragraphs (l) and (m);
- (c) in paragraph (p) by deleting “exceptional” and inserting instead —
“ special ”.

17. Rule 27 amended

Rule 27(1) is amended by deleting “a case is listed for trial or hearing,” and inserting instead —

“ the trial or the hearing of a case, ”.

18. Heading to Part 4 Division 3 Subdivision 1 inserted

After the heading to Part 4 Division 3 the following Subdivision heading is inserted —

“ **Subdivision 1 — Preliminary** ”.

19. Rule 31 amended

Rule 31(5) is amended by deleting “(2), despite subrule (3).” and inserting instead —

“ (3), despite subrule (4). ”.

20. Heading to Part 4 Division 3 Subdivision 2 inserted

After rule 34 the following Subdivision heading is inserted —

“ **Subdivision 2 — Mediations** ”.

21. Rule 35A amended

Rule 35A(2)(a) is amended by inserting after “a” —

“ legally qualified ”.

22. Heading to Part 4 Division 3 Subdivision 3 inserted

After rule 35A the following Subdivision heading is inserted —

“
Subdivision 3 — Entry for trial, and ancillary matters”.

23. Rule 37 amended

Rule 37(3) is repealed and the following subrule is inserted instead —

“
(3) To enter a case for trial the plaintiff must file and serve a Form 1 (Entry for trial) which must state the dates, within 40 days after the date of the form, when the parties are not available to attend a pre-trial conference.”.

24. Heading to Part 4 Division 3 Subdivision 4 inserted

After rule 38 the following Subdivision heading is inserted —

“
Subdivision 4 — Pre-trial conference, and ancillary matters”.

25. Rule 39 amended

Rule 39(2) is amended by inserting after “Judge” —

“ or legally qualified Registrar ”.

26. Rule 41 amended

After rule 41(3) the following subrule is inserted —

“

- (4) The presiding officer, whether or not the parties agree, may report to the Court any failure by a party to cooperate in the pre-trial conference.

”.

27. Heading to Part 4 Division 3 Subdivision 5 inserted

After rule 41 the following Subdivision heading is inserted —

“ **Subdivision 5 — Listing conference** ”.

28. Rule 42 amended

- (1) Rule 42(1)(a) and (b) are deleted.
(2) Rule 42(2) and (3) are repealed.

29. Rule 43 amended

After rule 43(3) the following subrule is inserted —

“

- (3a) The lawyer who will appear at trial for a party must certify that he or she has reviewed the pleadings and is satisfied that they adequately define all the issues of fact or law that the party contends will need to be determined at trial, and the document containing this certification must be tendered at the listing conference.

”.

30. Heading to Part 4 Division 3 Subdivision 6 inserted

After rule 43 the following Subdivision heading is inserted —

“ **Subdivision 6 — Inactive cases** ”.

31. Part 4A inserted

After rule 45 the following Part is inserted —

“

**Part 4A — Documents to be filed, served or
delivered before trial**

45A. Application of Part

This Part applies only to a case that is an action commenced by writ.

45B. “Trial date”, meaning of

In this Part —

“**trial date**” of a case means the day on which the trial of the case is listed to start.

45C. Particulars of damages

- (1) This rule applies to any party to a case who claims damages in the case.
- (2) The party must file and serve particulars of damages within 60 days after the day the defence (or if there is more than one defendant, the first defence) is filed.
- (3) If the case is a personal injuries action, the particulars of damages must set out in detail the amount of money claimed for any of the following, the justification for claiming it, and how it is calculated —
 - (a) loss of earning capacity —
 - (i) past; and
 - (ii) future;
 - (b) loss of superannuation due to —
 - (i) past loss of earning capacity; and
 - (ii) future loss of earning capacity;
 - (c) special damages;
 - (d) past gratuitous services;
 - (e) interest on past loss and expenditure;
 - (f) future need —
 - (i) for medical services; and
 - (ii) for nursing and other care and assistance services, whether paid or gratuitous; and
 - (iii) for appliances, and modifications to equipment and environment;
 - (g) any other discrete item of damages.
- (4) If the case is not a personal injuries action, the particulars of damages must set out in detail any amount of money claimed, the justification for claiming it, and how it is calculated.

45D. Building and engineering contracts — actions involving claims under

- (1) In this rule —

“Scott Schedule” means a statement of the issues of fact and law that the plaintiff contends will need to be determined at trial.
- (2) This rule applies to a case in which a claim is made under a building or engineering contract.
- (3) The plaintiff must apply to the Court for a direction as to whether the plaintiff is to lodge a Scott Schedule.
- (4) The application must be made within 75 days after the day the defence (or if there is more than one defendant, the first defence) is filed.

45E. Index of expert witness reports

- (1) In this rule —
 “report” of an expert witness includes the notes of a treating medical practitioner.
- (2) This rule applies if under rule 40(5)(a) the presiding officer orders the parties to attend a listing conference.
- (3) A party must file and serve an index of the reports of any expert witness that the party intends to tender as evidence at trial and must do so —
 - (a) at least 14 days before the day of the listing conference, if the party is the plaintiff; and
 - (b) at least 7 days before the day of the listing conference, in the case of any other party.
- (4) At any time before the 21 day period preceding the trial date, a party served with an index (**“A”**) may serve the party who served the index (**“B”**) with a notice requiring information as to the qualifications and experience of an expert witness whose report is listed in the index.
- (5) On A serving B with a notice, B must provide the information within 7 days.
- (6) Except with the leave of the Court, a party cannot tender the report of an expert witness as evidence unless the party has complied with this rule in relation to that report.

45F. Papers for the Judge

- (1) At least 42 days before the trial date, the plaintiff must file and serve the papers for the Judge comprising —
 - (a) the pleadings, and any affidavits ordered to stand as pleadings, with any amendments to them incorporated and the dates of those amendments; and
 - (b) the particulars of damages filed and served under rule 45C; and
 - (c) any request or order for particulars that has been made together with the particulars given; and
 - (d) any order for directions made under the RSC Order 19 rule 4.
- (2) If the pleadings are amended after the plaintiff has filed and served the papers referred to in subrule (1), the plaintiff must file and serve the whole of the pleadings as amended unless the Court orders otherwise.

45G. Records and objects intended to be tendered as evidence

- (1) In this rule —
“**object**” means plan, photograph, model or other object.
- (2) The RSC Order 36 Rule 4 does not apply to a case.
- (3) Except with the leave of the Court, a party cannot tender a record or object as evidence at trial unless the party has complied with —
 - (a) subrules (4) and (7) in relation to the record; and
 - (b) subrules (4) and (5) in relation to the object.
- (4) A party must file and serve a list of all records and objects that the party intends to tender as evidence at trial and must do so —
 - (a) at least 42 days before the trial date, if the party is the plaintiff; and
 - (b) at least 28 days before the trial date, in the case of any other party.
- (5) A party who files and serves a list under subrule (4) must allow inspection of any object in the list by any party who requests it and must do so within 3 working days of receiving the request or within a longer period agreed between the parties.
- (6) A party (“A”) served under subrule (4) with a list must serve the party who filed the list with a written notice stating —
 - (a) which of the records and objects in the list A agrees may be admitted in evidence without further proof; and
 - (b) which of the records and objects in the list A does not agree may be admitted in evidence without further proof,and must do so at least 14 days before the trial date.
- (7) At the start of the trial, a party who has filed and served a list under subrule (4) must give the trial Judge —
 - (a) each record in the list that the party intends to tender with the consent of each other party, bundled together; and
 - (b) each other record in the list that the party intends to tender, bundled together; and
 - (c) a copy of any bundle of records given under paragraph (a) or (b).

45H. Outline of submissions

- (1) A party must file and serve the “Outline of submissions” —
 - (a) 42 days before the trial date, if the party is the plaintiff; or
 - (b) 28 days before the trial date, in the case of any other party.
- (2) The Outline of submissions consists of a Form 2 to which is attached —
 - (a) a document titled “Submissions”; and
 - (b) a document titled “Legal authorities”; and
 - (c) if the party wants the Court to make orders, a document titled “List of orders wanted”; and
 - (d) if the party chooses, a document titled “Draft chronology”.
- (3) The document titled “Submissions” —
 - (a) must contain the contentions of law or fact the party intends to make at the trial, expressed so as to convey the substance of them clearly and as succinctly as possible; and
 - (b) must set out the contentions in numbered paragraphs; and
 - (c) must refer to each principal legal authority on which the party relies in support of the contention; and
 - (d) must not be more than 10 pages long; and
 - (e) must be signed by the person who prepared it.
- (4) The document titled “Legal authorities” —
 - (a) must list, and number consecutively, each principal legal authority to which the court is referred, under these headings in this order —
 - (i) “Written laws”;
 - (ii) “Judgments”;
 - (iii) “Legal texts”;and
 - (b) must mark with an asterisk any legal authority from which it is intended to read any text to the court at the hearing; and
 - (c) for each written law listed, include its short title, its jurisdiction and each relevant rule or provision of it; and

[Example:

Written laws:

*1. *Interpretation Act 1984* (WA) s. 5 “under”; s. 61.

2. *Acts Interpretation Act 1901* (Cth) s. 22(1).]

- (d) for each judgment listed, include —
 - (i) first, its citation in an authorised law report (if any) and any page of it on which is a relevant passage; and
 - (ii) second, its media neutral citation (if any);

[Example:

Judgments:

*3. Ward v The Queen (2000) 23 WAR 254 at 274; [2000] WASCA 413 at [106].

4. Talbot v Lane (1994) 14 WAR 120.]

and

- (e) for each authoritative legal text listed, refer to the edition concerned and to each relevant passage.
- (5) The document titled “List of orders wanted” must set out the orders that the party wants the Court to make.
 - (6) The document titled “Draft chronology” must state succinctly in numbered paragraphs arranged in date order the date and facts of each event that is material to the case.

45I. List of witnesses

- (1) At least 7 days before the trial date for a case, a party to the case must file and serve a document listing, in the order in which they will be called, each witness that the party intends to call to give evidence and stating —
 - (a) any special circumstances that affect the date or time when the witness can be called; and
 - (b) any directions that the Court has made in relation to the taking of evidence from the witness by audio link or video link.
- (2) Except with the leave of the Court, a party cannot call a witness at a trial unless the party has complied with this rule in relation to that witness.

”.

32. Rule 46 amended

After rule 46(2) the following subrule is inserted —

“

- (2a) If a plaintiff in a personal injuries action is required under subrule (2) to give discovery of income tax returns, the plaintiff must discover the returns lodged by the plaintiff for, at least —
 - (a) the financial year during which the incident pleaded as the cause of the personal injuries occurred; and
 - (b) each of the 2 preceding financial years.

”.

33. Rule 48 replaced by Parts 5A and 5B

Rule 48 is repealed and the following is inserted instead —

“

Part 5A — Expert Evidence**48. Expert witnesses, certification as to compliance with practice directions**

- (1) This rule applies to the report of an expert witness that a party intends to tender as evidence other than the report of a medical expert prepared for the purposes of a personal injuries action.
- (2) The author of the report must certify in the report that he or she has read and complied with the practice direction made by the Court for the purposes of this rule.
- (3) Except with the leave of the Court, a report that has not been certified as required under subrule (2) is not admissible at trial.

Part 5B — Interlocutory applications**48A. Amending pleadings, RSC Order 21 modified**

- (1) The RSC Order 21 applies, subject to this rule.
- (2) The RSC Order 33 Rule 10 and rule 48C of these rules do not apply to an interlocutory application to amend pleadings.
- (3) If an application to amend a pleading is filed after a case is listed for trial, the application must be accompanied by an affidavit of the party making the application or the lawyer representing the party.
- (4) The affidavit is to set out the facts —
 - (a) that have arisen since the certificate was tendered under rule 43(3a); and
 - (b) that ground the party's or the lawyer's argument that the amendment is necessary.

48B. Interlocutory applications after listing for trial

- (1) If an application for an interlocutory order is filed after a case is listed for trial, the application must be accompanied by an affidavit of the party making the application or the lawyer representing the party.
- (2) The affidavit is to set out the facts that ground the party's or the lawyer's argument that the order is necessary.

- (3) Unless justice requires otherwise, the Court will not grant an application referred to in subrule (1) if to do so would necessitate adjourning the trial.
- ”.

34. Rule 52 amended

- (1) Rule 52(2) is amended by inserting after “decision, a” —
“ legally qualified ”.
- (2) Rule 52(6) is amended by inserting after “A” —
“ legally qualified ”.

35. Rule 53 amended

Rule 53(2) is amended by deleting “an address for service of the respondent in Australia.” and inserting instead —
“ a statement of the respondent’s service details. ”.

36. Rule 55 amended

- (1) Rule 55(1) is amended by deleting “a Registrar” in each place where it occurs and inserting instead —
“ a legally qualified Registrar ”.
- (2) Rule 55(3) is amended by deleting “the Registrar” and inserting instead —
“ the legally qualified Registrar ”.

37. Rule 59 amended

After rule 59(2) the following subrules are inserted —

- “
- (3) On determining an appeal the Court may make any order as to money paid under rule 51 or 53 that is just having regard to any order made as to costs.
- (4) If the Court does not make an order under subrule (3), a legally qualified Registrar may make such an order at any time.
- ”.

38. Rule 60 amended

- (1) Rule 60(1) is amended by inserting after “A” —
“ legally qualified ”.
- (2) Rule 60(2) is amended by inserting after “A” —
“ legally qualified ”.

39. Rule 61 amended

- (1) Rule 61(1) is repealed.

- (2) Rule 61(2)(a) is amended by deleting “a trial, or the hearing of an application,” and inserting instead —

“ the hearing of an application ”.

- (3) Rule 61(5) and (6) are repealed and the following subrule is inserted instead —

“

- (5) At least 2 clear working days before the date of the hearing, each party must file and immediately serve an Outline of submissions as described in rule 45H(2) to (6) and the reference in rule 45H(3)(a) to the trial is to be read as a reference to the hearing.

”.

40. Rule 71 amended

Rule 71(2) is repealed and the following subrules are inserted instead —

“

- (2) An application under this rule must be in writing and set out the grounds of the application.
- (2a) After receiving an application under this rule the Court may, in writing, direct the applicant to provide additional information in the form of an affidavit.
- (2b) The Court is not required to deal with an application if the applicant fails to comply with a direction under subrule (2a).

”.

41. Part 11 inserted

After rule 72 the following Part is inserted —

“

Part 11 — Transitional and savings provisions

73. Terms used in this Part

In this Part —

“**commencement**” means the coming into operation of the *District Court Amendment Rules 2007*;

“**former rules**” means the *District Court Rules 2005* as enacted before being amended by the *District Court Amendment Rules 2007*.

74. Cases to which former rules apply

If immediately before the commencement a case is listed for trial or the trial of a case is being conducted, then the former rules apply to and in respect of the case.

75. Outline of submissions for certain hearings

If immediately before the commencement —

- (a) a Judge or a Registrar has ordered under rule 61(2) that a hearing of an application is to be subject to rule 61; and
- (b) the hearing has not been held but is due to be held within 7 days,

then rule 61(1), (5) and (6) of the former rules applies to and in respect of the hearing.

”.

42. Schedule 1 amended

- (1) Schedule 1 Form 1 is deleted and the following form is inserted instead —

“

1. Entry for trial (r. 37)

District Court of Western Australia		At:
Entry for trial		Number:
Matter Certificate * delete if inapplicable	<p>[Names of all parties]</p> <p>The [party] certifies that —</p> <ul style="list-style-type: none"> • the [party] has been given discovery and inspection by all of the other parties; and • *the [party] served interrogatories and has received answers; and • the [party] has complied with all directions and orders made by the Court at the case management hearing; and • the [party] has complied with all orders made by the Court since the case management hearing; and • no other interlocutory orders are needed; and • the [party] has complied with the <i>Rules of the Supreme Court 1971</i> Order 36A; and • the [party] has complied with the <i>District Court Rules 2005</i> rule 36(1); and • the [party] has complied with the <i>District Court Rules 2005</i> rule 45C; and • *the [party] has complied with the <i>District Court Rules 2005</i> rule 45D; and • *the [party] has complied with the <i>District Court Rules 2005</i> rule 45D; and • this matter is in all respects ready for trial. 	
Entry for trial	<p>The [party] enters this matter for trial.</p> <ul style="list-style-type: none"> • 	
Unavailable dates	The parties are not available for a pre-trial conference on these dates:	
Signature of party or lawyer	<p>.....</p> <p>Party/[Party's] lawyer</p>	Date:

”.

(2) After Schedule 1 Form 2 the following form is inserted —

“

3. Outline of submissions (r. 45H, 61)

District Court of Western Australia		At:
Outline of submissions		Number:
Matter	<i>[Names of all parties]</i>	
Party filing outline	<i>[Name of party filing outline and whether plaintiff or defendant, appellant or respondent]</i>	
Notice *Delete if inapplicable	Attached to this form are these documents in this order — <ul style="list-style-type: none"> • Submissions; and • Legal authorities; and • *List of orders wanted; and • *Draft chronology. 	
Signature of party or lawyer Party/ <i>[Party's]</i> lawyer	Date:

”.

Dated: 6 July 2007.

Judges' signatures:

A. KENNEDY.

M. J. BOWDEN.

P. J. HEALY.

M. G. MULLER.

A. D. FENBURY.

B. J. H. GOETZE.

S. M. DEANE

T. D. SWEENEY.

R. E. KEEN.

R. A. MAZZA.

W. G. GROVES.

H. J. WISBEY.

P. R. EATON.

C. J. O'BRIEN.