

JU304\*

District Court of Western Australia Act 1969

## District Court Amendment Rules (No. 2) 2013

Made by the Judges of the District Court.

### 1. Citation

These rules are the *District Court Amendment Rules (No. 2) 2013*.

### 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 20 January 2014.

### 3. Rules amended

These rules amend the *District Court Rules 2005*.

### 4. Rule 20 amended

- (1) In rule 20(6) delete “taken not to have been filed at the registry.” and insert:

taken —

- (a) not to have been filed at the registry; and
- (b) not to be part of the Court’s record.

- (2) After rule 20(6) insert:

- (7A) If a party files a document electronically at the registry but does so in error, the Court may, with the consent of the party, remove the document from the Court record.
- (7B) The RSC Order 67 applies, subject to subrule (7C).
- (7C) A reference in the RSC Order 67 rule 5(1) to a registrar refusing to file a document is to be taken as including a reference to the Court removing from the Court record a document filed electronically by means of the Court’s website.

**5. Rule 21 amended**

In rule 21(6) delete “This” and insert:

Subject to the RSC Order 9, this

**6. Rule 22A replaced**

Delete rule 22A and insert:

**22A. RSC Order 9A rule 2 and Order 12 rule 2 modified: form of memorandum of appearance**

- (1) The RSC Order 9A rule 2 and Order 12 rule 2 apply, subject to this rule.
- (2) A memorandum of appearance filed in the Court must be in the form of Form 1AA.
- (3) Notice of an interested non-party may be made on the same form.

**7. Rule 22C amended**

In rule 22C(1) after “to be” insert:

filed or

**8. Rules 23B and 23C inserted**

At the end of Part 3 Division 4 insert:

**23B. RSC Order 58 rule 14 modified: form of originating summons**

- (1) The RSC Order 58 rule 14 applies, subject to this rule.
- (2) An originating summons filed in the Court may be in the form of Form 1B.
- (3) The respondent to an originating summons must file a Form 1AA (Memorandum of appearance) in relation to the summons on or before the hearing date specified on the summons.
- (4) The respondent must serve the Form 1AA as soon as practicable after filing it.

**23C. Enforcement of order under another Act giving jurisdiction**

- (1) This rule applies to an order that may, under another written law —
  - (a) be filed with the Court; and
  - (b) be enforced as if it were an order of the Court.
- (2) A party filing the order must also file a Form 1C (Notification of contact and service information) together with the order.
- (3) If a party against whom the order is made makes an interlocutory application in relation to the order, that party must file a Form 1C (Notification of contact and service information) together with the application.
- (4) The party referred to in subrule (3) must serve the Form 1C as soon as practicable after filing it.

**9. Rule 23 amended**

In rule 23 in the definition of *mediator* delete “who is approved as a mediator by the Chief Judge.” and insert:

agreed by the parties and approved by the Court.

**10. Rule 35AA inserted**

After rule 35 insert:

**35AA. Settlement at mediations**

- (1) At the conference the parties must, in good faith, attempt to settle the case or, failing settlement, resolve as many of the issues between them as possible and identify the issues to be tried.
- (2) Evidence of anything said or any admission made in the course of the conference is not admissible at the trial of the case.
- (3) Subrule (2) does not apply —
  - (a) to the hearing of an application for costs arising out of the conference; or
  - (b) to anything said or any admission made that all parties at the conference, in an agreement recorded in writing by the mediator, agree is admissible at the trial of the case.

**11. Rule 37 amended**

After rule 37(4) insert:

- (5) The Court may, in a particular case, direct that a form other than Form 1 be used to enter the case for trial.

**12. Rule 41 amended**

In rule 41(3)(a) after “lawyer” insert:

on the record

**13. Part 4 Division 3 Subdivision 5A inserted**

After rule 41 insert:

**Subdivision 5A — Settlement of cases****42A. Offers of compromise**

- (1) The RSC Order 24A applies, subject to subrule (2).
- (2) The RSC Order 24A rule 10(4) does not apply to a case.
- (3) Subrule (4) applies if —
  - (a) an offer is made by a plaintiff; and
  - (b) the offer is not accepted by the defendant; and
  - (c) the plaintiff obtains judgment on the claim to which the offer relates; and
  - (d) the judgment is no less favourable to the plaintiff than the terms of the offer.
- (4) Unless the Court otherwise orders, the plaintiff is entitled to an order against the defendant for —
  - (a) the plaintiff’s costs in respect of the claim from the date on which the offer was made, taxed as between a law practice and its client; and
  - (b) the plaintiff’s costs incurred before that date, taxed on a party and party basis.

**14. Rule 44G amended**

After rule 44G(4) insert:

- (5) The Court may, in exceptional circumstances and on such terms as it thinks just, set aside the dismissal of a case under subrule (1).

- (6) For the purposes of subrule (5) it does not matter that the case was dismissed before the commencement of that subrule.

**15. Rule 45H amended**

In rule 45H(3)(c) delete “contention; and” and insert:

contention, and each relevant page or paragraph in that authority; and

**16. Part 5 Division 3 inserted**

At the end of Part 5 insert:

**Division 3 — Medical examination**

**47A. RSC Order 28 modified**

- (1) The RSC Order 28 applies, subject to this rule.
- (2) For the purposes of subrule (1), a reference in the RSC Order 28 rule 1 to a “medical practitioner” or a “medical adviser” is to be taken as being a reference to a person registered under the *Health Practitioner Regulation National Law (Western Australia)*, or a substantially similar law of another jurisdiction, in any of the following health professions —
- (a) dental;
  - (b) medical;
  - (c) occupational therapy;
  - (d) optometry;
  - (e) physiotherapy;
  - (f) psychology.

**17. Rule 47B inserted**

At the beginning of Part 5A insert:

**47B. RSC Order 36A modified**

- (1) The RSC Order 36A applies, subject to this rule.
- (2) For the purposes of subrule (1), a reference in the definition of *medical evidence* in the RSC Order 36A rule 1 to “expert evidence on medical matters” is to be taken as being a reference to the evidence of a person registered under the *Health Practitioner Regulation National Law (Western Australia)*, or a substantially

similar law of another jurisdiction, in any of the following health professions —

- (a) dental;
- (b) medical;
- (c) occupational therapy;
- (d) optometry;
- (e) physiotherapy;
- (f) psychology.

**18. Rule 58 amended**

In rule 58(7) after “subrule (3)” insert:

or rule 61A

**19. Rule 61A inserted**

At the end of Part 6 insert:

**61A. Return of security for costs deposit**

If —

- (a) the Court has made an order for the payment of money by a party to the Court as security for the costs of an appeal (the *security for costs deposit*); and
- (b) under that order, the party has paid the security for costs deposit; and
- (c) no action has been taken on the appeal for 12 months; and
- (d) no claim has been made on the security for costs deposit,

the Court may return the security for costs deposit to the party.

**20. Rule 71F inserted**

At the beginning of Part 10 insert:

**71F. Term used: court record**

In this Part —

*court record* in respect of a case, means —

- (a) any record or thing held by the Court in respect of the case; and

- (b) the transcript of proceedings in the case before the Court.

**21. Rule 71 amended**

- (1) Delete rule 71(1) and (1A) and insert:

(1) This rule does not apply to searches for, and inspections of, Court documents and information using the Court's website.

(1A) Any person is entitled, on payment of the prescribed fee, to search for, inspect and receive a copy of any of the following Court documents or information in a case —

- (a) the identity of the parties to a case;
- (b) the identity of the parties' lawyers;
- (c) the date on which the case commenced;
- (d) the date and time of a hearing in the case;
- (e) a writ and the statement of claim (if any) endorsed on it under the RSC Order 6 rule 3;
- (f) an index of documents filed in a registry;
- (g) a judgment or order of the Court.

- (2) In rule 71(10):

- (a) after "obtain" insert:

information, including

- (b) delete "information that" and insert:

information, that

Note: The heading to amended rule 71 is to read:

**Access to records and things (registry)**

**22. Rule 72 replaced**

Delete rule 72 and insert:

**72. Access to records and things (Court's website)**

- (1) In this rule —

*registered user* means a person who is authorised to file documents electronically by filing an electronic version of them by means of the Court's website under rule 20.

- (2) A registered user is entitled to search for, and inspect electronic copies of, any of the following Court documents or information in a case, whether or not the registered user is a party to the case —
- (a) the identity of the parties to a case;
  - (b) the identity of the parties' lawyers;
  - (c) the date on which the case commenced;
  - (d) the date and time of a hearing in the case;
  - (e) an index of documents filed in a registry.
- (3) A registered user who is a party to the case is entitled to search for, and inspect electronic copies of, any of the following Court documents or information in that case —
- (a) documents filed electronically in a registry;
  - (b) judgments or orders made by the Court.
- (4) This rule does not entitle a person to search, inspect or obtain information, including a copy of any part of a document that contains information, that the person is prevented by a written law, an order made under a written law or an order of a court from possessing.

**23. Schedule 1 Form 1AA amended**

In Schedule 1 Form 1AA after the row beginning "Date of filing" insert:

| Disclosure pursuant to RSC Order 9A                                                                                                                                                       |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Identity of any person who is an interested non-party<br><br>(If applicable: see <i>Rules of the Supreme Court 1971</i> Order 9A rule 2 and <i>District Court Rules 2005</i> rule 22A(3)) |  |



**24. Schedule 1 Forms 1B and 1C inserted**

After Schedule 1 Form 1A insert:

**1B. Originating summons (r. 23B)**

|                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                          |                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| District Court of Western Australia<br>Held at Perth <sup>1</sup>                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                          | Application No:            |
|                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                          | <b>Originating summons</b> |
| Parties                                                                                                                                                                                                                                                                                    | Applicant<br><br>Respondent                                                                                                                                                                                                                                                                                                                                              |                            |
| Date of filing                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                          |                            |
| Act or rule that allows the application <sup>2</sup>                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>Summons</b>                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <p>You, [<i>respondent</i>] of [<i>respondent's address</i>], are required to attend before the Court on the date set out in this summons for the hearing of an application that:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> </ol> |                                                                                                                                                                                                                                                                                                                                                                          |                            |
| Hearing date <sup>3</sup>                                                                                                                                                                                                                                                                  | Date:<br>Time:<br>Place: District Court Building, 500 Hay Street, Perth <sup>1</sup>                                                                                                                                                                                                                                                                                     |                            |
| Notice to the respondent                                                                                                                                                                                                                                                                   | <p>If you do not attend before the Court on the date set out in this summons, the Court may make such orders as it considers just and expedient in your absence.</p> <p>If you wish to be heard on this application, you must file a Form 1AA (Memorandum of appearance) under the <i>District Court Rules 2005</i> before, or on, the date set out in this summons.</p> |                            |

| <b>Applicant's contact and service details</b>                                                                                                                                                               |                  |                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|
| Geographical address of applicant<br><br>(Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C) |                  |                  |
| Name of lawyer<br><br>(If one has been appointed)                                                                                                                                                            |                  |                  |
| Postal address for service of documents<br><br>(Must be provided)                                                                                                                                            |                  |                  |
| Email address<br><br>(Optional — if provided, may be used for service of documents)                                                                                                                          |                  |                  |
| Fax number<br><br>(Optional — if provided, may be used for service of documents)                                                                                                                             |                  |                  |
| Telephone number                                                                                                                                                                                             |                  |                  |
| Reference                                                                                                                                                                                                    |                  |                  |
| Signature of applicant or lawyer                                                                                                                                                                             | Applicant/lawyer | Date of signing: |

## Notes to Form 1B —

1. If not held at Perth, state the location of the relevant registry.
2. State the name of the Act or rules and section or rule number under which the application is being made.
3. The Court will complete this row when the originating summons is filed.

**1C. Notification of contact and service information (r. 23C)**

|                                                                   |                                                        |
|-------------------------------------------------------------------|--------------------------------------------------------|
| District Court of Western Australia<br>Held at Perth <sup>1</sup> | Application No:                                        |
|                                                                   | <b>Notification of contact and service information</b> |

|                                                                                                                                                                                                           |              |                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------|
| Parties                                                                                                                                                                                                   | Applicant    |                  |
|                                                                                                                                                                                                           | Respondent   |                  |
| Date of filing                                                                                                                                                                                            |              |                  |
| <b>Service and contact details</b>                                                                                                                                                                        |              |                  |
| Geographical address of applicant<br>(Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971 Order 71A rule 2</i> and <i>District Court Rules 2005 rule 22C</i> ) |              |                  |
| Name of lawyer<br>(If one has been appointed)                                                                                                                                                             |              |                  |
| Postal address for service of documents<br>(Must be provided)                                                                                                                                             |              |                  |
| Email address<br>(Optional — if provided, may be used for service of documents)                                                                                                                           |              |                  |
| Fax number<br>(Optional — if provided, may be used for service of documents)                                                                                                                              |              |                  |
| Telephone number                                                                                                                                                                                          |              |                  |
| Reference                                                                                                                                                                                                 |              |                  |
| Signature of applicant or lawyer                                                                                                                                                                          | Party/lawyer | Date of signing: |

Note to Form 1C —

1. If not held at Perth, state the location of the relevant registry.

## 25. Schedule 1 Form 1 replaced

Delete Schedule 1 Form 1 and insert:

### 1. Entry for trial (r. 37)

|                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                          |
|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| District Court of Western Australia<br>Held at Perth <sup>1</sup>                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Action No:<br><br><b>Entry for trial</b> |
| Matter                                                                                 | [Names of all parties]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                          |
| Date of filing                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                          |
| Certificate                                                                            | <p>The [party] certifies that —</p> <ul style="list-style-type: none"> <li>• each party has given discovery to, and permitted inspection by, each other party;</li> <li>• all requests for answers to interrogatories have been answered or validly objected to (delete if inapplicable);</li> <li>• each party has complied with all case management directions and orders made by the Court;</li> <li>• the [party] does not require any other interlocutory orders to be made;</li> <li>• the [party] has complied with the <i>Rules of the Supreme Court 1971</i> Order 36A;</li> <li>• the [party] has complied with the <i>District Court Rules 2005</i> rule 36(1);</li> <li>• the [party] has complied with the <i>District Court Rules 2005</i> rule 45C;</li> <li>• the [party] has complied with the <i>District Court Rules 2005</i> rule 45D (delete if inapplicable).</li> </ul> |                                          |
| Entry for trial                                                                        | The [party] enters this matter for trial.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                          |
| Has the requirement to attend a pre-trial conference been dispensed with? <sup>2</sup> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                          |
| Unavailable dates                                                                      | The parties are not available for a pre-trial conference on these dates:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                          |

|                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                  |     |  |
|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----|--|
| Date of pre-trial conference / directions hearing / listing conference <sup>3</sup> | Date:<br>Time:<br>Place: District Court Building, 500 Hay Street, Perth <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                  |     |  |
| Information about the pre-trial conference                                          | All parties are required to attend the pre-trial conference in person accompanied by their respective lawyers. Where a party is a body corporate it must attend by an agent who is authorised by the body corporate to conduct settlement negotiations and settle the case.<br><br>At the pre-trial conference, the parties must, in good faith, attempt to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried.<br><br>If the action is settled before the pre-trial conference please immediately notify the Court that this has occurred. |                  |     |  |
| Contact details of party or lawyer                                                  | Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                  |     |  |
|                                                                                     | Firm                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                  |     |  |
|                                                                                     | Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                  |     |  |
|                                                                                     | Phone                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                  | Fax |  |
|                                                                                     | Email                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                  |     |  |
|                                                                                     | Reference                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                  |     |  |
| Signature of person making this certification                                       | Name of person making this certification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Date of signing: |     |  |

## Notes to Form 1 —

1. If not held at Perth, state the location of the relevant registry.
2. If it has, specify the date of the order.
3. The Court will complete this row when the entry for trial notice is filed. If a listing conference or directions hearing has already been allocated, insert this information into the hearing details.

Dated: 19th December 2013.

Judges signatures:

His Honour Chief Judge P. D. MARTINO.

Her Honour Judge S. M. DEANE.

His Honour Judge P. R. EATON.

His Honour Judge K. F. SLEIGHT.

His Honour Judge P. P. McCANN.

Her Honour Judge J. A. WAGER.

His Honour Judge A. S. STAVRIANOU.

Her Honour Judge T. D. SWEENEY.

His Honour Judge B. J. H. GOETZE.

His Honour Judge R. E. KEEN.

His Honour Judge M. J. BOWDEN.

Her Honour Judge A. M. I. SCHOOMBEE.

His Honour Judge C. P. STEVENSON.

His Honour Judge S. G. SCOTT.

Her Honour Judge F. C. E. DAVIS.

His Honour Judge P. B. O'NEIL.

His Honour Judge S. E. STONE.

His Honour Judge J. G. STAUDE.

His Honour Judge R. E. BIRMINGHAM.

His Honour Judge A. S. DERRICK.

Her Honour Judge A. G. BRADDOCK.

His Honour Judge D. R. PARRY.

His Honour Judge M. E. HERRON.