

**JUSTICE****JM301****DISTRICT COURT OF WESTERN AUSTRALIA ACT 1969  
DISTRICT COURT AMENDMENT RULES 1996**

Made by the Judges of the District Court of Western Australia.

**Citation**

1. These rules may be cited as the *District Court Amendment Rules 1996*.

**Commencement**

2. These rules come into operation on 1 January 1997.

**Principal Rules**

3. In these rules the *District Court Rules 1996* (published in *Government Gazette*, 7 March 1996, pp851-66) are referred to as the principal rules.

**Order 1 amended**

4. (1) Order 1 Rule 1 of the principal rules is amended by inserting "and of Order 4" after "Order"
- (2) Order 1 of the principal rules is further amended by adding Rule 7 as follows—
- "7. The provisions of Order 29A of the *Rules of the Supreme Court 1971* shall not apply to proceedings commenced in the District Court."

**Order 5 amended**

5. Order 5 of the principal rules is repealed and the following Order is substituted—
- "Order 5: Case Management Following Entry For Trial.**

**Schedule of Damages**

1. (1) No later than 14 days prior to a pre-trial conference the plaintiff shall file and serve schedules setting out calculations and/or particulars quantifying or justifying the following items of damages (if the same are claimed):

- (i) Past loss of earning capacity.
- (ii) Future loss of earning capacity.
- (iii) Special damages.
- (iv) Future medical expense and/or care.
- (v) Past and future gratuitous services.
- (vi) Special appliances or services.
- (vii) Any other discrete item of damages.

(2) The schedules filed and served pursuant to sub-rule (1) shall be consistent with the plaintiff's pleadings.

**Pre-Trial Conference**

2. After an action has been entered for trial the parties are required to attend a pre-trial conference, unless—

- (a) Judgment is entered prior to the pre-trial conference being held and no issue remains in the action other than costs.
- (b) A Judge or Registrar orders that the pre-trial conference be dispensed with, or
- (c) The action falls within a class of actions which the Chief Judge directs is not subject to this order.

**Exchange of expert reports**

3. (1) In this rule "report" means a medical report or a report of an expert within the meaning of Order 36A of the *Rules of the Supreme Court 1971*.

(2) Unless the Registrar directs otherwise, a party must serve on the other party, at least 14 days before the date fixed for a pre-trial conference, the substance of every report which that party intends to rely on at trial which is then in the hands of that party or his or her solicitor.

**Parties must attend in person**

4. (1) Unless the Registrar orders otherwise a party must attend a pre-trial conference in person or, if a body corporate, by an authorised officer.

(2) Where an action is being litigated on behalf of a party by an insurer, sub-rule (1) may be satisfied by the attendance of an authorised officer of that insurer.

(3) Subject to sub-rule (1), a party may be represented at pre-trial conference by counsel or a solicitor.

**Procedure at Pre-Trial Conference**

5. (1) Unless a Judge otherwise orders, a pre-trial conference shall be held before the Registrar and in accordance with any directions that the Registrar may make.

(2) The parties attending a pre-trial conference must make a bona fide attempt to reach agreement on the matters in dispute between them.

(3) A pre-trial conference may be adjourned from time to time.

**Negotiations to be without prejudice**

6. (1) Subject to sub-rule (2), evidence of anything said or any admission made in the course of a pre-trial conference is not admissible at the trial of the action.

(2) Sub-rule (1) does not apply to—

- (a) the trial of a person for an offence alleged to have been committed at a pre-trial conference;
- (b) the hearing of an application for costs arising out of a pre-trial conference; or
- (c) anything said or admitted which all parties to the pre-trial conference agree may be admitted in evidence at the trial and which the Registrar records in writing as having been so agreed.

**Actions settled**

7. (1) When a compromise is reached at a pre-trial conference—
- (a) the parties and their counsel or solicitors shall sign and file a written consent to the making of an order giving effect to the compromise; and
  - (b) unless the approval of a judge is required, judgment shall be entered at the pre-trial conference.
- (2) When the approval of a Judge to a compromise is required the Registrar shall cause a date to be fixed for the matter to be brought before a Judge in chambers and the plaintiff's solicitors shall issue a summons returnable on that date.
- (3) When the requirement of personal attendance by a party is dispensed with or is satisfied by the attendance of an authorised officer of an insurer, sub-rule (1)(a) is satisfied by the signing of a consent by the counsel or solicitor representing the party and, if an authorised officer of an insurer is in attendance, by that officer.

**Actions not settled**

8. (1) When a pre-trial conference does not result in compromise the Registrar shall adjourn the action to a listing conference and make orders or directions which may include the following—
- (a) Within 14 days the plaintiff shall file and serve—
    - (i) A chronology of relevant events.
    - (ii) A concise statement of the issues of fact and law which the plaintiff contends will need to be determined at trial (which in respect of actions concerning building or engineering disputes shall be in the form of a *Scott Schedule*).
    - (iii) An index of the reports of any expert witness(es) that the plaintiff intends to call at trial.
  - (b) Within 14 days of service of such documents the defendant shall file and serve—
    - (i) The defendant's chronology of relevant events.
    - (ii) A concise statement of the issues of fact and law that the defendant contends will need to be determined at trial.
    - (iii) An index of the reports of any expert witness(es) that the defendant intends to call at trial.
  - (c) Any other order or direction that may be appropriate pursuant to Order 29 Rule 2 of the *Rules of the Supreme Court 1971* (whether on the application of a party or of the Court's own motion).
  - (d) Orders or directions providing for the pre-trial supervision of the action by a Judge.
- (2) Chronologies and statements of issues filed and served pursuant to sub-rule (1) shall be consistent with the pleadings of the party providing the same.
- (3) A party complying with the said orders or directions is not obliged to disclose an event or issue that is primarily relevant to the credibility of the opposing party (or its principal witnesses).
- (4) In the event of a party failing to comply with any of the said orders or directions, any other party to the action may apply to a Registrar for appropriate orders in default.
- (5) The Registrar may dispense with the requirements of sub-rule (1) and immediately fix dates for trial, when satisfied that all of the following circumstances apply—
- (a) Counsel who will appear at trial have been fully briefed and have advised their respective clients as to the prospects at trial.
  - (b) The parties have made reasonable efforts to agree on—
    - (i) facts not the subject of real controversy; and
    - (ii) the tender of expert reports without need of the expert being called.
  - (c) Reliable estimates have been made as to the probable length of trial.
  - (d) No useful purpose would be served by orders and directions pursuant to sub-rule (1).

**Listing Conference**

9. (1) A listing conference shall be conducted by the Registrar, and subject to sub-rule (2), shall be attended by counsel who are to appear at trial.
- (2) A counsel to whom sub-rule (1) applies need not attend a listing conference if his or her instructing solicitor attends and tenders a certificate from that counsel as to the following matters—
- (a) The estimated length of trial.
  - (b) The number of witnesses that his or her party intends to call.
  - (c) Whether there are any special circumstances affecting the date or time at which any particular witness can be called.

- (d) Whether any particular witness will be attending from a long distance or from outside the jurisdiction.
  - (e) That the parties have made reasonable efforts to reach agreement on—
    - (i) facts not the subject of real controversy; and
    - (ii) the tender of expert reports without need of experts being called.
- (3) No action shall be listed for trial until all orders and directions previously made have been complied with or appropriate default orders have been made.

**Interlocutory applications subsequent to listing for trial**

10. Any interlocutory application that may result in adjournment of a trial will only be granted upon special circumstances being shown by affidavit.

**Costs**

11. (1) The Registrar at pre-trial conference or at listing conference may make any orders for costs as though sitting in chambers.
- (2) When an action is compromised the Registrar may make all necessary orders as to costs including orders—
- (a) Awarding costs reserved.
  - (b) Awarding costs of interrogatories.

**The Registrar**

12. In this order the expression “the Registrar” includes the Principal Registrar, each Registrar, and any Deputy Registrar designated for the purposes of this Order by the Chief Judge.”

**Order 8 Amended**

6. (1) Order 8 Rule 5 of the principal rules is amended by inserting “or Registrar” after “Judge”.
- (2) Order 8 Rule 29 of the principal rules is amended by inserting “and to an application for leave to appeal” after “*mutatis mutandis* to an appeal”.

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KEVIN HAMMOND, Chief Judge.  
 I. R. GUNNING, Judge.  
 G. T. SADLEIR, Judge.  
 N. H. S. CLARKE, Judge.  
 A. KENNEDY, Judge.  
 P. J. HEALY, Judge.  
 H. H. JACKSON, Judge.  
 R. J. VIOL, Judge.  
 J. G. BARLOW, Judge.  
 P. J. WILLIAMS, Judge.  
 D. D. CHARTERS, Judge.  
 P. D. BLAXELL, Judge.  
 L. A. JACKSON, Judge.  
 M. G. MULLER, Judge.  
 M. A. YEATS, Judge.  
 M. D. F. O’SULLIVAN, Judge.  
 R. A. MACKNAY, Judge.  
 V. J. FRENCH, Judge.  
 A. D. FENBURY, Judge.  
 H. J. WISBEY, Judge.