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**JUSTICE**

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JU301

District Court of Western Australia Act 1969

**District Court Amendment Rules (No. 2) 2018**

Made by the judges of the District Court.

**1. Citation**

These rules are the *District Court Amendment Rules (No. 2) 2018*.

**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 14<sup>th</sup> day after that day.

**3. Rules amended**

These rules amend the *District Court Rules 2005*.

**4. Rule 3 amended**

- (1) In rule 3 delete the definitions of:

*lawyer*

*legally qualified registrar*

- (2) In rule 3 insert in alphabetical order:

*department* means the department of the Public Service that principally assists the Minister in the administration of the Act;

*lawyer* means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

*legally qualified registrar* means a registrar who is or has been an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

**5. Rule 6 amended**

In rule 6(2)(ba) delete “or to “case management registrar””.

**6. Rule 22B deleted**

Delete rule 22B.

**7. Rule 29 amended**

In rule 29:

- (a) delete “Order 29”;
- (b) delete “Order 33 (other than rules 9 and 10)” and insert:

Order 33

- (c) delete “Order 59 rule 3(2)”.

**8. Rule 37 amended**

Delete rule 37(2) and insert:

- (2) Subrule (1) does not affect Part 5A.

**9. Rules 38A and 38B inserted**

At the end of Part 4 Division 3 Subdivision 3 insert:

**38A. After entry for trial, no interlocutory application without leave**

- (1) After a case is entered for trial, no party, without the Court’s leave, can apply —
  - (a) to file further pleadings; or
  - (b) to join or substitute parties; or
  - (c) for particulars, interrogatories, discovery, inspection, or the disclosure or non-disclosure of expert evidence; or
  - (d) to have evidence taken before a special examiner or on commission.
- (2) Subrule (1) does not limit the power of the judge at the trial to make orders for or in relation to any of the matters referred to in that subrule.

**38B. Countermanding entry for trial**

- (1) Within 14 days after the date on which a party enters a case for trial under rule 37 or 38, any other party may apply for an order countermanding the entry for trial.
- (2) An application under subrule (1) must be made by filing and serving a summons and a supporting affidavit on the party who entered the case for trial at least 2 clear days before hearing of the summons.

- (3) If any party to the summons is represented by a lawyer, the lawyer, or another lawyer who is conversant with the case, must personally attend the hearing of the summons and must not send a clerk to attend.
- (4) On an application made under this rule, the Court —
  - (a) may countermand the entry;
  - (b) may allow the entry to stand;
  - (c) may direct that the entry take effect upon the happening of certain events or on a date set by the Court;
  - (d) may make any other order or give any other direction it thinks proper.
- (5) The costs of an application made under this rule are costs in the cause, unless the Court orders otherwise.
- (6) A party who does not make a successful application under subrule (1) is taken to be ready for trial.

**10. Rule 42 amended**

Delete rule 42(1)(c) and insert:

- (c) order the parties to exchange, within such period as the officer orders, any medical report, expert medical evidence or other expert evidence that has not already been exchanged under Part 5;

**11. Rule 45H amended**

Before rule 45H(1) insert:

- (1A) The RSC Order 34 rule 1A does not apply to a case.

**12. Part 5A replaced**

Delete Part 5A and insert:

### **Part 5A — Expert evidence**

**47B. Terms used**

In this Part —

*expert medical evidence* means the evidence of a medical expert on medical matters;

***medical expert*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in any of these health professions —

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

***medical report*** means a written report containing expert medical evidence;

***personal injury case*** means a case in which a claim is made in respect of —

- (a) a person's personal injuries (including any illness or impairment of physical or mental condition); or
- (b) a person's death.

**47C. RSC Order 36A does not apply**

The RSC Order 36A does not apply to a case.

**47D. General procedural matters**

- (1) Any application made under this Part before trial must be made by summons.
- (2) A direction given under this Part may be revoked or varied by a subsequent direction given at or before the trial in the case.

**47E. Expert medical evidence in personal injury cases**

- (1) This rule applies to expert medical evidence in personal injury cases.
- (2) Nothing in this rule requires evidence to be disclosed to a defendant who has not entered an appearance.
- (3) A direction given under this rule may apply to only a part of a medical report or expert medical evidence.
- (4) Unless the Court directs otherwise, a party must serve on the other parties, in accordance with this rule, a copy of each medical report the substance of which the party intends to rely on at the trial.

- (5) Each copy referred to in subrule (4) must be served —
- (a) if the medical report is in existence before the case is entered for trial —
    - (i) if the report will be relied on by the party entering the case for trial — before the case is entered for trial; or
    - (ii) if the report will be relied on by another party — before the time for applying under rule 38B for an order countermanding the entry for trial expires, or any later time that may be fixed by an order made on any such application;
  - or
  - (b) if the medical report comes into existence after the case is entered for trial — as soon as practicable thereafter.
- (6) If a party applies for a direction under subrule (4) —
- (a) an affidavit supporting the application is not required; and
  - (b) the Court may inspect the medical report the subject of the application without disclosing its contents to any other party.
- (7) If the Court gives a direction under subrule (4), it may direct that, in lieu of serving a copy of any medical report, the substance of all or any expert medical evidence that a party intends to rely on at the trial be disclosed in writing to such other parties and within such period as the Court specifies.
- (8) Except with the Court's leave, or pursuant to a direction of the Court, or where all other parties agree, expert medical evidence cannot be adduced at a trial unless —
- (a) a copy of a medical report containing the substance of the evidence has been served in accordance with subrules (4) and (5); or
  - (b) the substance of that evidence has been disclosed in writing to all other parties within the time limited by a direction given under subrule (7) or, if no such direction has been given, a reasonable time before the trial; or
  - (c) the Court has permitted the evidence to be given by affidavit.

- (9) Without limiting the Court's powers under this rule, the Court may give a direction under subrule (4) or (7) or give leave under subrule (8) if a medical report contains —
- (a) statements by the party against whose interest the evidence is to be led; or
  - (b) hearsay evidence as to the manner in which a personal injury was sustained; or
  - (c) other evidence that would not be admissible at the trial.

**47F. Other expert evidence**

- (1) This rule applies to expert evidence other than expert medical evidence in personal injury cases.
- (2) A direction given under this rule may apply to only a part of the report or evidence of an expert.
- (3) Expert evidence cannot be adduced at a trial unless —
  - (a) the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under this rule and has complied with any direction given on the application; or
  - (b) all parties consent to it being adduced; or
  - (c) the Court has given leave for it to be adduced; or
  - (d) the Court has permitted the evidence to be given by affidavit.
- (4) After a case is entered for trial —
  - (a) the party who entered the case for trial cannot apply under subrule (3); and
  - (b) any other party cannot apply after the time for applying under rule 38B for an order countermanding the entry for trial expires, or any later time that may be fixed by an order made on any such application.
- (5) On an application made under this rule, the Court may direct —
  - (a) that a copy of an expert witness's report, the substance of which a party intends to rely on at the trial, be served on such other parties and within such period as the Court may specify; or
  - (b) the substance of all or any expert evidence that a party intends to adduce at the trial be disclosed in writing to such other parties and within such period as the Court may specify.

- (6) The author of a report containing expert evidence must certify in the report to having read and complied with the practice direction made by the Court for the purposes of this subrule.
- (7) If a report has not been certified as required by subrule (6), it is not admissible at trial, except with the Court's leave.

**47G. Derogation of privilege**

If under rule 47E or 47F a party is required or directed to disclose any expert evidence, the party cannot, after the time fixed for disclosure by the rule or direction (as the case may be) expires, object on the ground of privilege (within the meaning of the *Evidence Act 1906* section 32A) to the evidence being disclosed.

**47H. Enforcing this Part**

- (1) Rules 47E(7) and 47F(3) do not affect the enforcement under any other provisions of these rules of a direction given under this Part.
- (2) A direction given under this Part is not enforceable by a writ of attachment or an order of committal.

**47I. Court may limit expert evidence**

Before or at the trial in a case, the Court may, by a direction, limit the number of medical experts or other experts who may be called as witnesses at the trial.

**13. Rule 48AA amended**

Before rule 48AA(1) insert:

- (1A) The RSC Order 36B rule 1(1) applies as if the definition of *Registry* were deleted and replaced by the definition of *Registry* in rule 3 of these rules.

**14. Rule 48AB amended**

Delete rule 48AB(1) and insert:

- (1) The RSC Order 36B rule 3(1) and (1A) do not apply to a case.

**15. Rule 48AC amended**

(1) Delete rule 48AC(1) and insert:

(1) The RSC Order 36B rule 5A applies subject to this rule.

(2) In rule 48AC(2) delete “rule 3A(1)” and insert:

rule 5A(2) and (3)

Note: The heading to amended rule 48AC is to read:

**RSC Order 36B rule 5A modified: form of subpoena**

**16. Rule 48AD replaced**

Delete rule 48AD and insert:

**48AD. RSC Order 36B rule 7 modified: USB devices not permitted**

The RSC Order 36B rule 6(7)(b) applies as if the reference to “USB device” were omitted.

**17. Rule 48AE amended**

In rule 48AE(2) delete “rule 8,” and insert:

rule 9,

**18. Rule 48AF amended**

In rule 48AF(2) delete “rule 8,” and insert:

rule 9,

**19. Rule 48A amended**

Delete rule 48A(2B), (2), (3) and (4) and insert:

(2) A party to a case cannot amend any of its pleadings, without the Court’s leave, after whichever of the following happens first —

(a) a certificate is tendered under rule 43(3a) in the case on behalf of any party; or

(b) the case is listed for trial.

- (3) An application for leave to amend a pleading must be accompanied by an affidavit of the party making the application, or the lawyer representing the party, that sets out the facts —
- (a) that have arisen since the time expired for amending a pleading without the Court's leave; and
  - (b) that ground the party's or the lawyer's argument that the amendment is necessary.

**20. Rule 48B amended**

Before rule 48B(1) insert:

- (1A) This rule does not apply to an interlocutory application to amend pleadings.

**21. Rule 59 amended**

Delete rule 59(2) and insert:

- (2) On determining an appeal the Court may fix the amount of costs but otherwise they are to be taxed in accordance with the *Legal Profession Act 2008* section 280.

**22. Rule 71 amended**

Delete rule 71(4) and insert:

- (4) A party to a case is entitled, at no charge, to inspect and obtain a copy of any part of the court record in respect of the case other than the transcript.

**23. Schedule 1 amended**

- (1) In Schedule 1 delete Form 1AB.
- (2) In Schedule 1 Form 1 delete “the *Rules of the Supreme Court 1971* Order 36A;” and insert:

Part 5A;

His Honour KEVIN FREDERICK SLEIGHT,  
Chief Judge of the District Court,  
District Court of Western Australia.

Date: 31 August 2018.