



Western Australia

Workers' Compensation and Injury Management Act 1981

**Workers' Compensation and Injury
Management Conciliation Rules 2011**

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Workers' Compensation and Injury Management Conciliation Rules 2011

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Workers' Compensation and Injury Management Conciliation Rules 2011

Part 1 — Preliminary

1. Citation

These rules are the *Workers' Compensation and Injury Management Conciliation Rules 2011*¹.

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 day on which the *Workers' Compensation and Injury Management Amendment Act 2011* Part 2 comes into operation.

3. Terms used

- (1) In these rules —
 - (a) the dispute to which an application for conciliation relates is referred to as the *dispute*; and
 - (b) the conciliation officer to whom the dispute is for the time being allocated under section 182G is referred to as the *conciliation officer*.

- (2) In these rules, unless the contrary intention appears —
- applicant** means the party to the dispute who lodges an application for conciliation;
- approved form** means a form approved under rule 30;
- certificate of outcome** means a certificate under section 182O(2);
- conciliation conference** means a conciliation conference conducted by the conciliation officer under section 182J;
- conciliation question** means a question referred to a medical assessment panel by the conciliation officer;
- EDS** means the electronic document system operated by or on behalf of the Conciliation Service that enables —
- (a) application to be made under section 182E for resolution of a dispute by conciliation; and
 - (b) documents to be lodged with the Conciliation Service in relation to the conciliation; and
 - (c) notices to be given to the Director and to parties to the conciliation; and
 - (d) parties to the conciliation to have access to documents relating to the conciliation;
- payment direction** means a direction under section 182K(2), (4) or (7) or 182L(2) or (4);
- representative** means a legal practitioner or registered agent appointed to represent a party to the dispute under section 182S(1);
- section** means a section of the Act;
- working day**, in relation to an application for conciliation, means any day other than a Saturday, a Sunday or a day which is a public holiday in the area where the conciliation is conducted.

[Rule 3 amended: Gazette 2 Aug 2019 p. 2993.]

4. Application of these rules

(1) In this rule —

former rules means the *Workers' Compensation (DRD) Rules 2005*;

transferred proceeding means a pending arbitration proceeding which under Schedule 8 clause 2(2) of the Act is taken to be the subject of an application for conciliation.

(2) These rules apply to —

- (a) an application for conciliation; and
- (b) a transferred proceeding.

(3) Subject to any directions given under Schedule 8 clause 2(3) of the Act, a step taken in a transferred proceeding before the commencement of these rules and in accordance with the former rules has effect as if it was taken in accordance with these rules.

Part 2 — Application for conciliation

5. Application for conciliation

- (1) Without limiting the effect of Part 7, that Part applies to the form and lodgment of an application for conciliation.
- (2) The applicant —
 - (a) must give the Director any document in the applicant's possession or under the applicant's control that will assist the applicant to discharge the onus imposed on the applicant by section 182F(2); and
 - (b) may give the Director any other document that is relevant to the application or the dispute.
- (3) If an application for conciliation relates to an application by a worker for —
 - (a) an order as to total liability under section 217; or
 - (b) an order as to the payment of additional expenses under Schedule 1 clause 18A(1), (1a) or (1b) of the Act,

the application for conciliation must be accompanied by a statement setting out the worker's financial circumstances and reasonable financial needs.

[Rule 5 amended: Gazette 2 Aug 2019 p. 2994.]

6. Accepting or rejecting an application for conciliation

- (1) As soon as is reasonably practicable after an application for conciliation is lodged, the Director must accept or reject it.
- (2) The Director must reject an application for conciliation if the dispute has previously been the subject of conciliation, unless a period of 56 days has elapsed since the issue of a certificate of outcome in relation to the previous conciliation.
- (3) The Director may reject an application for conciliation that —
 - (a) is not properly completed or properly lodged; or

(b) does not otherwise comply with these rules.

- (4) Unless the Director rejects an application for conciliation under subrule (2) or (3), the Director must accept it.
- (5) Upon accepting or rejecting an application for conciliation the Director must notify the applicant of acceptance or rejection and, in the case of rejection, of the reasons for rejection.

7. Providing copies of applications and other documents

- (1) As soon as is reasonably practicable after accepting an application for conciliation, the Director must give each party to the dispute, other than the applicant —
 - (a) a copy of the application; and
 - (b) a copy of any statement or other document lodged with the application.
- (2) If, after the Director has accepted an application for conciliation, a party to the dispute lodges a document in connection with conciliation of the dispute, the Director must give each other party to the dispute a copy of that document.

8. Discontinuing conciliation

- (1) The applicant may discontinue conciliation of the dispute, or of a matter in dispute, at any time before conciliation ends under section 182O.
- (2) The applicant must give written notice of discontinuance to the Director, and the Director must give a copy of the notice to each other party to the dispute.
- (3) Subject to Part XV Division 2 of the Act, the conciliation officer may make an order as to costs in relation to an application for conciliation if conciliation of the dispute has been discontinued.

Part 3 — Representation

9. Notice of representation

- (1) If a party to the dispute appoints a representative for the purposes of conciliation of the dispute, the representative must, within 3 working days of appointment, give written notice of the appointment to the Director and give a copy of the notice to each other party to the dispute.
- (2) If a representative is to represent a party to the dispute from the commencement of conciliation, the notice of appointment is to be taken to be lodged if the representative signs the first document lodged on behalf of the party in the conciliation and gives in that document the address of the representative as the party's address for service.
- (3) If a representative ceases to represent a party to the dispute, the representative must within 3 working days of cessation give written notice of the cessation to the Director and give a copy of the notice to each other party to the dispute.

10. Litigation guardian

- (1) If a party to the dispute is a child, the conciliation officer may appoint a litigation guardian to act on the child's behalf for the purposes of conciliation of the dispute.
- (2) If a party to the dispute is under a legal disability (other than because of being a child), the conciliation officer may defer making efforts to resolve the dispute until a litigation guardian is appointed to act on the party's behalf, whether under the *Guardianship and Administration Act 1990* or otherwise.
- (3) A deferral of resolution efforts under subrule (2) does not prevent the conciliation officer from forming a belief that there is minimal chance of an agreement, or further agreement, being reached in relation to the dispute.

Part 4 — Conduct of conciliation

11. Time limits

Where no time limit is fixed under the Act or these rules for the doing of any thing in connection with conciliation of the dispute, the conciliation officer may fix the time within which that thing must be done.

12. Conciliation conferences

- (1) When the conciliation officer requires a party to the dispute to attend a conciliation conference, the party must be given written notice of the requirement.
- (2) A requirement under subrule (1) must specify the date, time and venue of the conciliation conference.
- (3) A person may attend a conciliation conference by being present at the designated venue or, with the agreement of the conciliation officer, by telephone or other electronic means of communication.

13. Time limit for conciliation

- (1) Under section 182F(4) conciliation of the dispute commences when the Director accepts an application for conciliation and, subject to subrules (2) to (5), the time limit for conciliation is —
 - (a) 56 days from the day on which the Director accepts the application; plus
 - (b) any extension granted by the Director for a period not exceeding a further 56 days beginning on the day after the expiry of the period mentioned in paragraph (a).
- (2) The Director cannot grant a period of extension under subrule (1)(b) unless the conciliation officer has requested the Director to consider doing so.

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- (3) In considering whether to grant a period of extension under subrule (1)(b), the Director must have regard to —
- (a) the objectives of conciliation; and
 - (b) the particular circumstances relating to the dispute; and
 - (c) any recommendation made by the conciliation officer; and
 - (d) any submission made by a party to the dispute.
- (4) If the conciliation officer refers a question for determination by a medical assessment panel, the period between —
- (a) the day on which the dispute is referred; and
 - (b) the day on which the determination of the medical assessment panel is given to the Director,
- must be disregarded in calculating the time limit for conciliation of the dispute.
- (5) If the conciliation officer defers consideration of the dispute under rule 10(2), the period between —
- (a) the day on which the conciliation officer determines to defer consideration; and
 - (b) the day on which a litigation guardian is appointed,
- must be disregarded in calculating the time limit for conciliation of the dispute.

14. Certificate of outcome

In addition to the matters specified in section 182O(2), the certificate of outcome must set out —

- (a) the dispute to be resolved; and
- (b) any matter in dispute that has been resolved by agreement between the parties; and
- (c) subject to section 182O(3), the terms of that agreement; and
- (d) any matter in dispute that has not been resolved; and

- (e) if conciliation of a matter in dispute was discontinued under rule 8, that fact.

15. Payment directions

- (1) If the conciliation officer makes a payment direction, the terms of the payment direction must be set out in a written notice to be given by the conciliation officer to the parties to the dispute within 3 working days of making the direction.
- (2) Subrule (1) does not apply if the certificate of outcome is issued before the expiry of the period fixed by subrule (1).
- (3) A payment direction given under section 182K(2) or (4) must set out —
 - (a) the name of the employer directed to make payment; and
 - (b) whether the direction is for the payment of weekly compensation or statutory expenses or both; and
 - (c) in the case of a direction for payment of weekly compensation, subject to section 182K(3), the period for which weekly payments are to be made; and
 - (d) in the case of a direction for payment in respect of statutory expenses, a schedule setting out —
 - (i) subject to section 182K(5), each amount to be paid in respect of statutory expenses; and
 - (ii) the particular statutory expense to which each amount relates;and
 - (e) any conditions to which the payment direction is subject.
- (4) A payment direction given under section 182L(2) must set out —
 - (a) the name of the employer by whom payment is being made; and
 - (b) subject to section 182L(3), the period for which weekly payments are to be suspended or reduced; and

- (c) if weekly payments are to be reduced, the rate or amount of the reduced weekly payment.
- (5) In exercising the power to make a payment direction, the conciliation officer must have regard to whether, in the conciliation officer's opinion, each party to the dispute is making endeavours in good faith to facilitate the resolution of the dispute.

Part 5 — Costs

16. Terms used

In this Part —

costs means costs of, or incurred in connection with, an application for conciliation;

costs order means an order as to costs.

17. Costs

- (1) A party to the dispute may apply to the conciliation officer for a costs order.
- (2) An application for a costs order must be accompanied by —
 - (a) a statement of the costs claimed; and
 - (b) copies of any vouchers, accounts and receipts relevant to the costs claimed.
- (3) The conciliation officer may make a costs order if, and only if —
 - (a) the conciliation officer is satisfied that the dispute has been resolved by conciliation; or
 - (b) after the conciliation has ended, the conciliation officer is satisfied —
 - (i) that the dispute has been resolved by agreement between the parties; or
 - (ii) that there is no indication of the dispute becoming the subject of an application for arbitration under section 182ZT.
- (4) A decision to make a costs order, or to refuse to make a costs order, may be reviewed by the Director on the application of any party to the dispute, but otherwise is final.

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- (5) Upon review under subrule (4), the Director may —
 - (a) set aside any costs order made; and
 - (b) make any costs order that the conciliation officer might have made.

Part 6 — Medical assessment panels

18. Term used: worker

In this Part —

worker means the worker in respect of whom a conciliation question is to be determined.

19. Form for requirement to attend

When a medical assessment panel, for the purposes of assisting it in determining a conciliation question, requires the worker to attend before it, the worker must be given written notice of the requirement in the approved form.

20. Time, date and place of meeting

- (1) A medical assessment panel may determine the date on which, and the time and place at which, it is to meet to consider a conciliation question.
- (2) The medical assessment panel must notify the Director of any determination under subrule (1).
- (3) In determining the date and notifying the Director, the medical assessment panel must allow sufficient time to allow the Director, the worker and the employer of the worker to comply with these rules.

21. Notice of meeting

If a medical assessment panel is to meet to consider a conciliation question —

- (a) the worker must be notified of the time, date and place of the meeting —
 - (i) in the form referred to in rule 19; or
 - (ii) by written notice given to the worker by the Director;
- and

- (b) the Director must give the employer of the worker written notice of the time, date and place of the meeting.

22. Giving documents to medical assessment panel

- (1) Except when complying with a requirement under section 145D(2), the worker, the employer of the worker or the employer's insurer is not to give any medical certificate, medical report or other document directly to a medical assessment panel in connection with a conciliation question.
- (2) When the conciliation officer refers a question for determination by a medical assessment panel, the conciliation officer must —
 - (a) give to the Director, with the conciliation question, any medical certificates, medical reports or other documents that the conciliation officer has that are relevant to the conciliation question; and
 - (b) give to the worker, and the employer of the worker, written notice that lists the documents given under paragraph (a).
- (3) When the conciliation officer refers a question for determination by a medical assessment panel under clause 18A(2ab), the conciliation officer must give to the Director, with the conciliation question, any prescribed evidence referred to in clause 18A(2aa)(c)(ii) that has been produced to the conciliation officer.
- (4) Subject to any determination under rule 23(3), the Director must give the documents mentioned in subrules (2)(a) and (3) to the medical assessment panel.

[Rule 22 amended: Gazette 2 Aug 2019 p. 2994.]

23. Objection to document being given to medical assessment panel

- (1) The worker, or the employer of the worker, may file with the Director an objection to the Director giving a document to a medical assessment panel.

- (2) The objection must be lodged not later than 7 days before the day on which the medical assessment panel is to meet to determine the conciliation question.
- (3) The conciliation officer may determine whether the document may be given to the medical assessment panel.

Part 7 — Applications and other documents

24. Term used: document

In this Part —

document means an application or other document required or permitted under the Act or these rules to be made or given to, or filed with, the Director or the conciliation officer by a party to the dispute, or a representative of a party.

25. Form of documents

Every document —

- (a) must be in the appropriate approved form or, if there is no appropriate approved form, must be in a form satisfactory to the Director; and
- (b) where relevant, must be clearly written, typed or reproduced; and
- (c) must be properly completed.

[Rule 25 amended: Gazette 2 Aug 2019 p. 2994.]

26. Lodging documents

- (1) Every document must be lodged with the Conciliation Service.
- (2A) A party proposing to rely on a document in the conciliation of a dispute must lodge the document within any time limit which the conciliation officer directs.
- (2B) A party who has lodged a document outside a time limit directed under subrule (2A) may only rely on that document in the conciliation of the dispute at the discretion of the conciliation officer.
- (2C) In exercising discretion under subrule (2B), a conciliation officer is to have regard to the time when the party lodging the document first obtained it.

- (2) A document may be lodged with the Conciliation Service —
- (a) by presenting it at the office of the Conciliation Service when the office is open for business; or
 - (b) by sending it to the office of the Conciliation Service by pre-paid post; or
 - (c) by sending it to the Conciliation Service by fax in accordance with rule 27; or
 - (da) by sending it to the Conciliation Service by email in accordance with rule 28A; or
 - (d) by using the EDS.
- (3) The Director may at any time require a person who has lodged a document by fax, by email or by using the EDS to lodge the document in person or by post.

[Rule 26 amended: Gazette 12 Jun 2015 p. 2042-3; 2 Aug 2019 p. 2995.]

26A. Access to applications, notices and other documents through EDS

- (1) A requirement to notify a person or give them a copy of a document in relation to conciliation of a dispute is satisfied, on a day, if —
- (a) the notice or document becomes accessible using the EDS, to parties to the dispute generally, before 5.00 p.m. on that day; and
 - (b) electronic notification that the notice or document is accessible is sent, to parties to the dispute generally, before 5.00 p.m. on that day; and
 - (c) the person has access to the EDS in relation to conciliation of the dispute.
- (2) In subrule (1) —
- electronic notification***, in relation to a party, includes notification via an email sent to an email address provided by the party.

[Rule 26A inserted: Gazette 2 Aug 2019 p. 2995.]

27. Lodging by fax

- (1) The Director must approve a fax number for the service of documents under this rule (the *approved fax number*) and publish the number.
- (2) A document lodged electronically by fax must be sent to the approved fax number with a cover page that states —
 - (a) the sender's name and postal address; and
 - (b) those of the sender's document exchange number, telephone number and fax number that can be used to contact the sender; and
 - (c) the total number of pages (including the cover page) being sent.
- (3) A document that, with any attachments and a cover page, is more than 20 pages long, must not be lodged by fax unless the Director has, before the document is lodged, given permission under subrule (4).
- (4) For the purposes of subrule (3), the Director may give a person permission to lodge a document by fax if the Director is of the opinion that —
 - (a) a refusal to give the permission would occasion undue hardship to the person; or
 - (b) it is warranted by the urgency of the situation.
- (5) If the Director gives permission under subrule (4) to lodge a document by fax, the person lodging the document must include a copy of the permission with the fax, or otherwise confirm the permission on the cover page of the fax.

- (6) A person who lodges a document with the Conciliation Service by fax must —
- (a) endorse the first page of the original document with —
 - (i) a statement that the document is the original of a document sent to the Conciliation Service by fax; and
 - (ii) the date and time the document was sent by fax; and
 - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document for the duration of any proceeding to which the documents relate; and
 - (c) if directed to do so by the conciliation officer, produce the items referred to in paragraph (b) to the conciliation officer.

28A. Lodging by email

- (1) The Director —
- (a) may approve and publish an email address for the lodgment of documents under this rule; and
 - (b) may determine and publish requirements as to the permissible format and the maximum size of documents which may be lodged under this rule.
- (2) An email by which documents are lodged under this rule must —
- (a) state the sender's name; and
 - (b) state a telephone number through which the sender can be contacted; and
 - (c) list and describe the documents being lodged by the email.
- (3) Documents lodged under this rule must comply with any published requirements as to form and size.

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- (4) A person who lodges a document under this rule must produce a copy of the document if required by the conciliation officer.

[Rule 28A inserted: Gazette 12 Jun 2015 p. 2043-4; amended: Gazette 2 Aug 2019 p. 2996.]

[28. Deleted: Gazette 2 Aug 2019 p. 2996.]

29. Day of lodgment

A document is taken to have been lodged —

- (a) if the whole document is received before 5.00 p.m. on a particular working day, on that day; or
- (b) otherwise, on the next working day.

[Rule 29 amended: Gazette 2 Aug 2019 p. 2996.]

Part 8 — Miscellaneous

30. Forms

The chief executive officer may approve forms for use in the Conciliation Service.

31. Section 180 request

- (1) A request under section 180(2) or (3) must be made by written request served on the employer, insurer or WorkCover WA, as the case requires.
- (2) The request must be complied with within 7 days after the day on which the request is served.

32. Section 182ZL order

- (1) A worker may not apply for an order under section 182ZL until 14 days after the day on which the payment was due to be made.
- (2) As soon as practicable after making a decision in respect to an application for an order under section 182ZL the Director must notify the worker, and the employer of the worker, of the decision.

Notes

- ¹ This is a compilation of the *Workers' Compensation and Injury Management Conciliation Rules 2011* and includes the amendments made by the other written laws referred to in the following table.^{1a}

Compilation table

Citation	Gazettal	Commencement
<i>Workers' Compensation and Injury Management Conciliation Rules 2011</i>	9 Nov 2011 p. 4741-63	r. 1 and 2: 9 Nov 2011 (see r. 2(a)); Rules other than r. 1 and 2: 1 Dec 2011 (see r. 2(b) and <i>Gazette</i> 8 Nov 2011 p. 4673)
<i>Workers' Compensation and Injury Management Conciliation Amendment Rules 2015</i>	12 Jun 2015 p. 2042-4	r. 1 and 2: 12 Jun 2015 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jul 2015 (see r. 2(b)(ii))
<i>Workers' Compensation and Injury Management Conciliation Amendment Rules 2019</i> r. 1-3, 4(1), 6-8, 9(3) and (4), 10, 13-15	2 Aug 2019 p. 2992-6	r. 1 and 2: 2 Aug 2019 (see r. 2(a)); r. 3, 4(1), 6-8, 9(3) and (4), 10, 13-15: 5 Aug 2019 (see r. 2(c)(i))

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Workers' Compensation and Injury Management Conciliation Amendment Rules 2019</i> r. 4(2), 5, 9(1), (2) and (5), 11 and 12 ²	2 Aug 2019 p. 2992-6	4 Nov 2019 (see r. 2(b))

- ² On the date as at which this compilation was prepared, the *Workers' Compensation and Injury Management Conciliation Amendment Rules 2019* r. 4(2), 5, 9(1), (2) and (5), 11 and 12 had not come into operation. They read as follows:

4. Rule 3 amended

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

EDS exempt, in relation to conciliation of a dispute, has the meaning given in rule 3A;

5. Rule 3A inserted

After rule 3 insert:

3A. EDS exempt

- (1) A person is EDS exempt in relation to conciliation of a dispute at a particular time if, at that time —
 - (a) the person is a party to the dispute, is self-represented in relation to the dispute and is neither an insurer nor self-insured; or
 - (b) the person is exempt in relation to conciliation of the dispute under subrule (3).
- (2) A party is self-represented in relation to a dispute if —
 - (a) in respect of a worker — a representative is not engaged by or on behalf of the worker to assist in the resolution of the dispute; or
 - (b) in respect of an employer — the employer is uninsured.
- (3) The Director may exempt a person from a requirement to use the EDS in relation to conciliation of a dispute, or all disputes, if satisfied that it would be unreasonable for the person to be required to use the EDS in relation to conciliation of the dispute or disputes.

9. Rule 26 amended

- (1) Delete rule 26(1) and insert:
 - (1) Every document in relation to conciliation of a dispute must be lodged with the Conciliation Service using the EDS unless —
 - (a) the person lodging the document is EDS exempt in relation to conciliation of the dispute; or
 - (b) the EDS is unavailable for use at the time of lodging.
- (2) In rule 26(2):
 - (a) delete “A document may be lodged” and insert:

A person who is EDS exempt in relation to conciliation of a dispute may lodge a document in relation to the dispute

- (b) delete paragraph (c).
- (5) Delete rule 26(3) and insert:
 - (3) While the EDS is unavailable for use a document may be lodged as described in subrule (2)(a), (b) or (da).
 - (4) The Director may at any time require a person who has lodged a document by email or by using the EDS to lodge the document in person or by post.

11. Rule 26A amended

Delete rule 26A(1)(c) and insert:

- (c) the person is not a person who —
 - (i) is EDS exempt in relation to conciliation of the dispute; and
 - (ii) does not have access to the EDS in relation to conciliation of the dispute.

12. Rule 27 deleted

Delete rule 27.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
applicant.....	3(2)
approved fax number	27(1)
approved form.....	3(2)
certificate of outcome	3(2)
conciliation conference	3(2)
conciliation officer	3(1)
conciliation question	3(2)
costs	16
costs order.....	16
dispute.....	3(1)
document.....	24
EDS.....	3(2)
electronic notification	26A(2)
former rules.....	4(1)
payment direction	3(2)
representative	3(2)
section	3(2)
transferred proceeding	4(1)
worker.....	18
working day	3(2)