



Western Australia

Workers Compensation and Injury Management Act 2023

**Workers Compensation and Injury  
Management Arbitration Rules 2024**



# Workers Compensation and Injury Management Arbitration Rules 2024

## Contents

<b>Part 1 — Preliminary</b>		
1.	Citation	1
2.	Commencement	1
3.	Terms used	1
4.	References to party and dispute	2
<b>Part 2 — General procedural matters</b>		
5.	Registrar must accept or reject document	3
6.	Variation or revocation of Registrar's decision to reject document	4
7.	Party who lodges document must give copy of sealed document to each other party	4
8.	Relief from procedural requirements	4
9.	Time limits	5
10.	Order to obey requirement of rules	5
<b>Part 3 — Arbitration applications</b>		
<b>Division 1 — Time limits for lodging general applications</b>		
11.	Time limit for lodging general applications	6
12.	Registrar may extend time for lodging general application	6
13.	Lodging amended general applications	7
<b>Division 2 — Documents to accompany arbitration applications</b>		
14.	Application of this Division	7

Contents

---

15.	Information to be included in arbitration applications	8
16.	Documents to be lodged with arbitration applications	8
17.	Additional documents to be lodged in certain arbitration applications	9
18.	Reply to arbitration application	10
19.	Documents to be lodged with reply	11
20.	Procedure if party does not reply	12
	<b>Division 3 — Documents lodged out of time</b>	
21.	Documents lodged out of time	12
	<b>Part 4 — Representation</b>	
22.	Representation	13
23.	Notice of representation	13
24.	Litigation guardians	14
	<b>Part 5 — Joinder of parties</b>	
25.	Arbitrator may give leave to join another party	15
26.	Notice of joinder	15
27.	Reply by person joined	16
	<b>Part 6 — Documents, things and information</b>	
28.	Duty of disclosure	17
29.	Disclosure without order	17
30.	Orders relating to disclosure	18
31.	Orders under Act s. 341 or rule 30	19
32.	Request for order to produce documents (Act s. 341)	20
33.	Continuing obligation to disclose or produce documents	20
	<b>Part 7 — Witnesses</b>	
34.	Summonses	21
35.	Statements	21
36.	Medical evidence	23
37.	Medical reports	24

**Part 8 — Proceedings before an arbitrator**

**Division 1 — General proceedings**

38.	Consent orders	25
39.	Party may discontinue proceeding	25
40.	Attendance at proceedings held in private	26
41.	Arbitrator must not interview individual parties or witnesses	26
42.	Statement of agreed facts and issues	26
43.	Directions hearing	27

**Division 2 — Interlocutory applications**

44.	Interlocutory applications	27
45.	Reply to interlocutory applications	28

**Division 3 — Arbitration hearings**

46.	Notice of arbitration hearing	28
47.	Adjournment of arbitration hearing	29
48.	Application for adjournment	29
49.	Late application for adjournment	30
50.	Application may be dismissed or determined if adjournment not granted	30
51.	Index and record of documents	30

**Part 9 — Costs**

**Division 1 — Preliminary**

52.	Terms used	32
53.	Reference to costs determination	32

**Division 2 — Costs orders**

54.	Order as to costs	32
55.	Submissions on application for costs order	33
56.	Costs and expenses connected with assessing disputed degree of permanent whole of person impairment (Act s. 79(6))	33

**Division 3 — Assessment of costs**

57.	Application for assessment of costs	34
-----	-------------------------------------	----

**Part 10 — Lodging arbitration documents**

58.	Terms used	35
-----	------------	----

Contents

---

59.	Giving or lodging documents with Registrar or arbitrator	35
60.	Form of arbitration documents	35
61.	Requirement to lodge arbitration documents using EDS	36
62.	EDS exempt	36
63.	Lodging arbitration documents if EDS unavailable or person EDS exempt	37
64.	When arbitration document is taken to have been lodged	38
65.	When Registrar or arbitrator is taken to have given notice or copy of document in relation to arbitration document	39
<b>Part 11 — Giving documents</b>		
66.	Giving documents generally	41
67.	Address for receiving documents	42
68.	Giving documents personally	43
69.	Giving documents by email	44
70.	When document is taken to have been given by pre-paid post	45
71.	When document is taken to have been given by email	45
72.	Giving documents by alternative means	45
73.	Requirement to certify the giving of documents	45
<b>Part 12 — Miscellaneous</b>		
74.	Request under Act s. 306	46
75.	Arbitration Service seal	46
76.	Use of seal	46
77.	Approved forms	47
78.	Amendment of documents	47
<b>Part 13 — Repeal</b>		
79.	<i>Workers' Compensation and Injury Management Arbitration Rules 2011</i> repealed	48
<b>Notes</b>		
	Compilation table	49

**Defined terms**





# Workers Compensation and Injury Management Arbitration Rules 2024

## Part 1 — Preliminary

### 1. Citation

These rules are the *Workers Compensation and Injury Management Arbitration Rules 2024*.

### 2. Commencement

These rules come into operation as follows —

- (a) Part 1 — on the day on which these rules are published on the WA legislation website;
- (b) the rest of the rules — on 1 July 2024.

### 3. Terms used

In these rules —

***approved form*** means a form approved under rule 77;

***arbitration application*** means —

- (a) a general application; or
- (b) a death compensation application;

***arbitration hearing*** means the hearing of a proceeding for determination of a dispute by arbitration;

***business day*** means a day that is not a Saturday, Sunday or public holiday;

***claimant*** means a person who has made a claim for compensation under Part 2 Division 10 of the Act;

**compensation order** has the meaning given in section 131 of the Act;

**death compensation application** means —

- (a) an application under section 140(1) of the Act for a compensation order; or
- (b) an application for an order of an arbitrator under any of the following provisions of the Act —
  - (i) section 134(7) or (8);
  - (ii) section 141(2);
  - (iii) section 142(9);

**general application** means an application for determination of a dispute by arbitration made under section 331 of the Act;

**give** has the meaning given in section 497(1) of the Act;

**interlocutory application** means an application or request for an order in a proceeding, other than an order that finally determines the dispute between the parties;

**lodge** has the meaning given in section 497(1) of the Act;

**proceeding** means a proceeding before an arbitrator;

**representative** means a person specified in section 365(2) of the Act who is appointed by a party to the proceeding;

**working day** means a day on which the office of the Arbitration Service is open for business that is not a Saturday, a Sunday or a public holiday throughout the State.

#### **4. References to party and dispute**

In these rules —

- (a) in relation to a death compensation application, a reference to a party includes a reference to a claimant; and
- (b) a reference to a dispute is a reference to a dispute that is the subject of an arbitration application.

## **Part 2 — General procedural matters**

### **5. Registrar must accept or reject document**

- (1) The Registrar must, as soon as practicable after a document is lodged in accordance with Part 10, accept or reject the document.
- (2) The Registrar may reject a document that —
  - (a) is not properly completed or properly lodged; or
  - (b) is not accompanied by a document as required under these rules or an order of a dispute resolution authority; or
  - (c) does not otherwise comply with these rules or an order of a dispute resolution authority.
- (3) If the Registrar rejects a document, it is taken not to have been lodged.
- (4) If the Registrar does not reject a document, the Registrar must —
  - (a) accept the document; and
  - (b) seal the document by affixing the seal of the Arbitration Service to the document.
- (5) The Registrar must notify the person who lodged the document of —
  - (a) the decision to reject or accept the document; and
  - (b) if the document is rejected — the reason for rejecting the document.
- (6) If the document is accepted by the Registrar, the Registrar must give the person who lodged the document a copy of the sealed document.

**6. Variation or revocation of Registrar’s decision to reject document**

- (1) This rule does not apply to a decision of the Registrar to reject an arbitration application.
- (2) An arbitrator may, on the arbitrator’s own initiative or on the application of the person who lodged the document, vary or revoke a decision of the Registrar under rule 5 to reject a document.
- (3) An application under this rule may be determined in the absence of a party.
- (4) An arbitrator must inform each party to the proceeding of any decision made under subrule (2) to vary or revoke a decision of the Registrar under rule 5 to reject a document.

**7. Party who lodges document must give copy of sealed document to each other party**

- (1) A party who lodges a document that is accepted by the Registrar must give a copy of the sealed document to each other party to the proceeding in accordance with Part 11.
- (2) The copy of the sealed document must be given within 7 days after the day on which it is accepted by the Registrar unless —
  - (a) these rules provide otherwise; or
  - (b) the Registrar orders otherwise.
- (3) Despite subrule (1), an employer is not required to give a document to the employer’s insurer unless there is a dispute between the employer and the insurer.

**8. Relief from procedural requirements**

- (1) An arbitrator may, as the arbitrator thinks is necessary in the interests of justice or otherwise to give effect to the Act —
  - (a) extend or reduce a time limit for doing or commencing a thing under these rules; or

- (b) waive compliance with any other procedural requirement or prohibition under these rules.
- (2) An order for the purposes of subrule (1) may be given even if the time for complying has passed.
- (3) This rule does not apply in relation to the time limit for lodging a general application provided for in rule 11.

**9. Time limits**

If no time limit is fixed under the Act for doing a thing in relation to a proceeding, an arbitrator may fix the time limit within which the thing must be done.

**10. Order to obey requirement of rules**

- (1) An arbitrator may, at any time, make an order that requires a party to a proceeding to comply with a requirement of these rules.
- (2) The order —
  - (a) may be given to a party without the party being heard or notified; and
  - (b) must be in writing; and
  - (c) must specify the day by which the order must be complied with; and
  - (d) must be given to the party at least 3 working days before the day by which the order must be complied with.
- (3) If a party to the proceeding fails to comply with an order given in accordance with this rule, the arbitrator may —
  - (a) dismiss the proceeding; or
  - (b) make an order that determines the dispute, either generally or in relation to a particular matter in dispute.

## **Part 3 — Arbitration applications**

### **Division 1 — Time limits for lodging general applications**

#### **11. Time limit for lodging general applications**

A general application must be lodged with the Registrar within 28 days after the day on which —

- (a) the Director issues a certificate under section 313 of the Act having determined that a dispute is not suitable for conciliation; or
- (b) a conciliator issues a certificate of outcome under section 319(2) of the Act that identifies 1 or more matters not resolved by conciliation.

#### **12. Registrar may extend time for lodging general application**

- (1) The Registrar may, on application lodged by the applicant, extend the period of time allowed by rule 11 for lodging a general application if the Registrar is satisfied that there are extenuating circumstances for doing so.
- (2) As soon as practicable after giving each other party to the proceeding a copy of a sealed application for an extension of time under subrule (1), the applicant must —
  - (a) certify in the approved form that a copy of the application has been given to each other party to the proceeding; and
  - (b) lodge the approved form, certified in accordance with paragraph (a), with the Registrar.
- (3) A party who is given a copy of a sealed application for extension may, within 7 days after the day on which the copy of the sealed application is received, lodge written submissions to the Registrar about the application.
- (4) An extension may be given under subrule (1) even if the time for lodging a general application has passed.

- (5) In making a decision for the purposes of subrule (1), the Registrar must have regard to the circumstances of the particular case, including any submissions made to the Registrar in accordance with subrule (3).

**13. Lodging amended general applications**

- (1) This rule applies if —
- (a) an applicant lodges a general application within the period of time allowed under rule 11 or, if applicable, within the extended period of time allowed under rule 12(1); and
  - (b) the application is rejected by the Registrar under rule 5.
- (2) The applicant may, within the period of time referred to in rule 11, amend the application and lodge the amended application with the Registrar.

**Division 2 — Documents to accompany arbitration applications**

**14. Application of this Division**

- (1) This Division —
- (a) does not apply to a death compensation application that relates to a claim for compensation under Part 2 Division 10 of the Act if liability is accepted under section 138(3)(a) or 139(2)(a) of the Act in respect of the claim before the death compensation application is made; and
  - (b) ceases to apply to a death compensation application that relates to a claim for compensation under Part 2 Division 10 of the Act if liability is accepted under section 138(3)(a) or 139(2)(a) of the Act in respect of the claim after the death compensation application is made.

- (2) Despite subrule (1), an arbitrator may order that a provision of this Division applies in relation to a death compensation application that relates to a claim for compensation under Part 2 Division 10 of the Act, even if liability is accepted in respect of the claim.

**15. Information to be included in arbitration applications**

An arbitration application must specify —

- (a) the grounds for the application; and
- (b) the substantive issues in dispute.

**16. Documents to be lodged with arbitration applications**

- (1) An arbitration application must be accompanied by copies of any document, whether issued under the Act or otherwise, that the applicant proposes to adduce at the arbitration hearing, including —
- (a) medical certificates and medical reports, accompanied by a list of the names of medical practitioners consulted; and
  - (b) any report prepared by an approved workplace rehabilitation provider; and
  - (c) any statement of the substance of any expert evidence, other than evidence referred to in paragraph (a); and
  - (d) any witness statement referred to in rule 35(1); and
  - (e) any statement referred to in rule 35(4).
- (2) If the applicant proposes to adduce a document but is unable to lodge the document in accordance with subrule (1), the arbitration application must —
- (a) identify the document; and
  - (b) specify why the document is unable to be lodged with the arbitration application.



- (3) An applicant must, not less than 28 days, or any shorter period specified in any practice notes issued by the Registrar under section 384(3) of the Act, before the arbitration hearing —
- (a) lodge any document specified in the application in accordance with subrule (2)(a); and
  - (b) give a copy of the sealed document to each other party to the proceeding.
- (4) If the arbitration hearing is for the purpose of determining any of the following general applications, the only documents that may be adduced at the hearing are documents lodged in accordance with subrule (1) —
- (a) a general application in relation to section 63 or 64 of the Act for determination of a dispute about the reduction or discontinuation of income compensation payments;
  - (b) a general application in relation to section 68 of the Act to review the payment of income compensation to a worker;
  - (c) a general application in relation to section 146 of the Act for an order for a refund of an erroneous payment of compensation made by WorkCover WA, the employer or the insurer;
  - (d) a general application in relation to section 181 of the Act for an order to suspend —
    - (i) payments of compensation; or
    - (ii) the worker's entitlement to take and prosecute any proceedings under the Act.

**17. Additional documents to be lodged in certain arbitration applications**

- (1) The arbitration application must also be accompanied by a statement setting out the worker's financial circumstances and reasonable financial needs, in addition to the documents lodged

in accordance with rule 16, if the applicant seeks any of the following orders —

- (a) an order for additional income compensation under section 52 of the Act;
  - (b) an order for an increase in the medical and health expenses general limit amount under section 77 of the Act;
  - (c) an order for an increase for special expenses in the medical and health expenses general limit amount under section 78 of the Act.
- (2) A statement prepared for the purposes of subrule (1) must be accompanied by documents in support of the statement.

**18. Reply to arbitration application**

- (1) If a party to the proceeding receives a copy of a sealed arbitration application, the party must lodge a reply to the application within 14 days after the day on which the copy of the sealed application is received by the party.
- (2) The reply must —
- (a) identify —
    - (i) the parts of the application that are admitted by the party, if any; and
    - (ii) the parts of the application that are disputed by the party, if any;
- and
- (b) specify —
    - (i) the grounds on which the relevant parts of the application are disputed by the party; and
    - (ii) the issues for determination by the arbitrator.

**19. Documents to be lodged with reply**

- (1) A reply lodged in accordance with rule 18 must be accompanied by copies of any document, whether issued under the Act or otherwise, that the party proposes to adduce at the arbitration hearing, including —
  - (a) medical certificates and medical reports, accompanied by a list of the names of medical practitioners consulted; and
  - (b) any report prepared by an approved workplace rehabilitation provider; and
  - (c) any statement of the substance of any expert evidence, other than evidence referred to in paragraph (a); and
  - (d) any witness statement referred to in rule 35(1); and
  - (e) any statement referred to in rule 35(4).
- (2) If a party required to lodge a reply is a worker, the reply must be accompanied by the following —
  - (a) the name, address and field of practice of each medical practitioner not mentioned in the documents accompanying the application who examined or treated the worker in relation to the relevant injury;
  - (b) if the application is a general application in relation to section 68 of the Act to review the payment of income compensation to a worker — details of any appointments the worker has scheduled for a medical examination.
- (3) If a party required to lodge a reply proposes to adduce a document but is unable to lodge the document in accordance with subrule (1) or (2) (if applicable), the reply must —
  - (a) identify the document; and
  - (b) specify why the document is unable to be lodged with the reply.

- (4) A party required to lodge a reply must, not less than 28 days, or any shorter period specified in any practice notes issued by the Registrar under section 384(3) of the Act, before the arbitration hearing —
- (a) lodge any document specified in the reply in accordance with subrule (3)(a); and
  - (b) give a copy of the sealed document to each other party to the proceeding.

**20. Procedure if party does not reply**

If a party required to lodge a reply in accordance with rule 18 fails to do so —

- (a) the dispute may be determined as if the party did not dispute any part of the arbitration application; and
- (b) the arbitrator may make any order the arbitrator thinks fit to deal with the arbitration application.

**Division 3 — Documents lodged out of time**

**21. Documents lodged out of time**

- (1) In any proceeding, a document that is not lodged within the time limit prescribed in these rules cannot be adduced in evidence in the proceeding by any party to the proceeding without the leave of the arbitrator.
- (2) An arbitrator may give leave for the purposes of subrule (1) if —
  - (a) no other party is prejudiced by the document being adduced in evidence; or
  - (b) each other party consents to the document being adduced; or
  - (c) the arbitrator considers that, in the interests of justice, the document is required to be admitted in evidence in the proceeding.

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## Part 4 — Representation

### 22. Representation

For the purposes of section 365(2)(c) of the Act, the following persons are authorised to represent a party at an arbitration hearing —

- (a) if the party is a body corporate —
  - (i) a director of the body corporate; or
  - (ii) a secretary of the body corporate; or
  - (iii) any other officer of the body corporate authorised by the body corporate to represent the party;
- (b) if the party is a public sector body, as defined in the *Public Sector Management Act 1994* section 3(1) — a public sector employee authorised by the party to represent the party.

### 23. Notice of representation

- (1) If a party to a dispute appoints a representative for the purpose of section 365(2) of the Act, the representative must notify the Registrar of the appointment by lodging —
  - (a) the first document lodged by the party they represent in the proceeding and specifying in that document the address of the representative as the address for receiving documents; or
  - (b) notice of the appointment in accordance with Part 10 within 3 working days after being appointed.
- (2) If a representative's authority to act for a party is limited or restricted in any way, the representative must indicate the manner and extent of the limitation or restriction when notifying the Registrar under subrule (1).

**r. 24**

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- (3) If the representative does not indicate that their authority is limited or restricted, the Registrar or an arbitrator may assume that the authority is not limited or restricted.
- (4) If a representative ceases to represent the party, the representative must, within 3 working days after ceasing to be the representative, notify the Registrar that they have ceased to represent the party.

**24. Litigation guardians**

- (1) A litigation guardian appointed under section 367 of the Act must be a person who is —
  - (a) an appropriately qualified person; and
  - (b) not under a legal disability.
- (2) A person appointed as the litigation guardian of a child must, at the direction of the arbitrator, give written notice of the appointment to each person nominated by the arbitrator.
- (3) If a litigation guardian is appointed in a proceeding, the litigation guardian —
  - (a) is bound by these rules; and
  - (b) must do anything required by these rules to be done by the party or potential party; and
  - (c) may, for the benefit of the party or potential party, do anything permitted by these rules to be done by the party or potential party.

## Part 5 — Joinder of parties

### 25. Arbitrator may give leave to join another party

- (1) An arbitrator may, on application by a party to a proceeding or on the arbitrator's own initiative —
  - (a) make an order that another person be joined as a party to the proceeding; and
  - (b) following the joinder — make any further orders the arbitrator thinks fit.
- (2) For the purposes of subrule (1), an application by a party to a proceeding must specify —
  - (a) whether the other person is to be joined as a respondent or third party; and
  - (b) the personal details of the other person; and
  - (c) the reasons why the other person should be joined as a party to the proceeding.

### 26. Notice of joinder

- (1) If, on application by a party to a proceeding, a person is joined as a party to the proceeding, the party who made the application must, within 7 days after the day on which the order is made under rule 25(1)(a), notify the person that they have been joined as a party by giving the following documents to the person and, if the person is an employer but not a self-insurer, to the employer's insurer —
  - (a) written notice in the approved form advising the person —
    - (i) that they have been joined as a party to the proceeding; and
    - (ii) that they may, within 14 days after receiving the notice, lodge a reply; and

- (iii) if a reply is lodged under subparagraph (ii) — that they must, within 14 days after receiving the notice, give a copy of the sealed reply to each other party to the proceeding;
  - (b) a copy of the sealed arbitration application and any reply to the application;
  - (c) a copy of any sealed document that was lodged with the application or reply.
- (2) If, on the arbitrator's own initiative, a person is joined as a party to a proceeding, the Registrar must, within 7 days after the day on which the order is made under rule 25(1)(a), notify the person that they have been joined as a party by giving the documents referred to in subrule (1) to the person and, if the person is an employer but not a self-insurer, to the employer's insurer, if known.

**27. Reply by person joined**

- (1) Within 14 days after receiving a notice under rule 26(1)(a) or (2), a person joined as a party to a proceeding —
  - (a) may lodge with the Registrar a reply to the notice; and
  - (b) if a reply is lodged under paragraph (a) — must give a copy of the sealed reply to each other party to the proceeding.
- (2) If a person joined as a party to a proceeding wishes to object to the joinder, the person must include in the reply lodged under subrule (1)(a) the reasons why the person should not be a party to the proceeding.
- (3) Rule 19(1), (3) and (4) apply to a reply under this rule, with any necessary modifications.



## Part 6 — Documents, things and information

### 28. Duty of disclosure

- (1) For the purposes of this Part, a party to the proceeding has a duty to disclose a document if —
  - (a) at the time of receiving a request in accordance with rule 29(1), the document is or has been in the party's possession or under the party's control; and
  - (b) the document is relevant to an issue in the proceeding.
- (2) Despite subrule (1), a party does not have a duty to disclose a document if the party is excused under section 374 of the Act from producing the document.

### 29. Disclosure without order

- (1) If the time for lodging a reply under rule 18(1) has elapsed, a party (the *requesting party*) to a proceeding may request that another party (the *second party*) to the proceeding provide the requesting party with a list of each document that the second party has a duty to disclose.
- (2) A request under subrule (1) must be made by notice in writing given to the second party.
- (3) The second party must, within 21 days after receiving the notice, give to the requesting party a list specifying —
  - (a) each document to which the duty of disclosure applies that is in the second party's possession or under the second party's control; and
  - (b) each document to which the duty of disclosure applies that is not in the second party's possession or under the second party's control; and
  - (c) each document the second party is excused from producing under section 374 of the Act.

**r. 30**

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- (4) If the list given in accordance with subrule (3) specifies a document that is not in the second party's possession or under the second party's control, the list must be accompanied by a brief statement that explains why the document is no longer in the party's possession or under the party's control.
- (5) If the requesting party gives the second party further written notice requesting the production or inspection of a document specified in accordance with subrule (3)(a), the second party must, within 7 days after receiving the further notice —
  - (a) give the requesting party a copy of the document; or
  - (b) allow the requesting party to inspect the document.

**30. Orders relating to disclosure**

- (1) Subject to rule 31, an arbitrator may make any of the following orders relating to the disclosure of documents —
  - (a) an order that a party to the proceeding must comply with —
    - (i) a notice given in accordance with rule 29(2) requesting a list of each document that the party has a duty to disclose; or
    - (ii) a notice given in accordance with rule 29(5) requesting the disclosure or inspection of a document that the party has a duty to disclose;
  - (b) an order that a party to the proceeding must lodge an affidavit that sets out —
    - (i) the documents that are in the party's possession or under the party's control; and
    - (ii) if applicable — the circumstances in which the party lost possession or control of a document or class of documents that were, but are no longer, in the party's possession or under the party's control;

- (c) an order that a party to the proceeding is excused from the duty to disclose a document.
- (2) An affidavit under subrule (1)(b) must —
  - (a) confirm that every document required to be disclosed under rule 29(3) has been disclosed; and
  - (b) be sworn by —
    - (i) if the party is a natural person — by the person; or
    - (ii) if the party is a body corporate — by an appropriately authorised officer of the body corporate.

**31. Orders under Act s. 341 or rule 30**

- (1) An arbitrator may make an order under section 341 of the Act (in relation to a document, thing or information) or an order under rule 30 (in relation to a document) if the arbitrator is satisfied that the order is necessary for the fair, just, economical, informal and quick determination of a dispute.
- (2) In considering whether to make an order under section 341 of the Act or rule 30, the arbitrator may consider the following —
  - (a) whether the document, thing or information sought is relevant to an issue in dispute;
  - (b) the relative importance of the issue to which the document, thing or information relates;
  - (c) the likely time, cost and inconvenience involved in producing the document or thing, or providing the information;
  - (d) the likely effect on the outcome of the proceeding of —
    - (i) producing, or not producing, the document or thing; or
    - (ii) providing, or not providing, the information.

**32. Request for order to produce documents (Act s. 341)**

- (1) A party to a proceeding may lodge an interlocutory application in accordance with rule 44 for an order under section 341 of the Act that requires a person to produce the document specified in the order.
- (2) The interlocutory application must be accompanied by a proposed order.
- (3) If an arbitrator makes an order pursuant to an application under subrule (1), the party must, not less than 7 days before the day specified in the order as the day on which the documents must be produced, give a copy of the sealed order to —
  - (a) the person who is required to comply with the order; and
  - (b) each other party to the proceeding.
- (4) A person is not required to comply with an order that is not given in accordance with subrule (3).

**33. Continuing obligation to disclose or produce documents**

- (1) A party required to disclose or produce documents under rule 29 or 30 is under a continuing obligation until the end of the proceeding to disclose or produce any document to which the duty of disclosure applies that the party has not already disclosed or produced.
- (2) The party must, as soon as is practicable after the party becomes aware of a document to which the duty of disclosure applies that has not been disclosed —
  - (a) disclose the document; and
  - (b) if the document is a document specified in an order made under section 341 of the Act — produce the document in accordance with that order.

## Part 7 — Witnesses

### 34. Summonses

- (1) A summons issued under section 343 of the Act must be in the approved form.
- (2) If a summons is issued under section 343 of the Act on the request of a party to the proceeding, that party must give the summons to the person whose attendance is required not less than 7 days before the day on which the person is required to attend before the arbitrator.
- (3) A witness summons must be given personally in accordance with rule 68.
- (4) The person to whom the summons is directed is not required to comply with the summons unless —
  - (a) the summons is given to the person in accordance with this rule; and
  - (b) any witness allowance for the expenses of attendance prescribed by the regulations is paid to the person —
    - (i) at the time of giving the summons; or
    - (ii) not later than a reasonable time before the time at which the person is required to attend before the arbitrator.

### 35. Statements

- (1) If a party to the proceeding intends to call a witness to give evidence at the arbitration hearing, the party must lodge a statement (a *witness statement*) of the witness in accordance with rule 16(1)(d), 19(1)(d) or 21 (as the case requires).
- (2) A witness statement must —
  - (a) identify the witness making the statement; and
  - (b) disclose the substance of the proposed evidence of the witness; and

- (c) be signed by the witness.
- (3) The evidence in chief of a witness must be confined to matters set out in the witness statement, unless leave of the arbitrator is obtained.
- (4) Subject to subrule (5), a witness cannot appear in a proceeding to give evidence unless —
  - (a) the party calling that witness has lodged a statement for the witness in accordance with rule 16(1)(e), 19(1)(e), or 21 (as the case requires); and
  - (b) the arbitrator considers that the statement fully and properly specifies the following —
    - (i) the substance of the proposed evidence that the party calling the witness believes on reasonable grounds the witness will give;
    - (ii) the reliance the party intends to place on the evidence;
    - (iii) if any proposed evidence has not been included in the witness statement lodged for that witness, the reason why it was not included;
    - (iv) when any proposed evidence referred to in subparagraph (iii) is expected to be included in the witness statement.
- (5) For the purposes of section 334(7)(b) of the Act, an arbitrator may permit a witness to appear in a proceeding who would otherwise not be permitted to appear under section 334(5) of the Act if the arbitrator considers that the evidence of the witness will assist in the determination of the dispute in a manner that is fair, just, economical, informal and quick.
- (6) If a party to the proceeding proposes to give evidence, this rule applies to that party as though the party were the party's witness as well as being the party.

- (7) A certificate, report or statement referred to in rule 16(1)(a), (b) or (c) or 19(1)(a), (b) or (c) is taken to be a witness statement for the purposes of section 334(5) of the Act and this rule.
- (8) If a statement required to be lodged under subrule (1) or (4) makes reference to a document other than a medical report to which rule 37 applies, the document must not be adduced in evidence unless —
  - (a) a copy of that document is attached to the statement; or
  - (b) the document is, in the opinion of the arbitrator, sufficiently identified.

**36. Medical evidence**

- (1) Subject to section 342(2) of the Act, unless leave of an arbitrator is obtained —
  - (a) medical evidence from a medical practitioner must be in writing; and
  - (b) the medical practitioner is not required to attend the arbitration hearing and give evidence in relation to the written medical evidence.
- (2) An application for leave to require a medical practitioner to attend an arbitration hearing and give evidence must —
  - (a) be made as soon as practicable after the matter is listed for an arbitration hearing; and
  - (b) specify the grounds on which the leave is sought.
- (3) An arbitrator may give leave for the purposes of this rule if the arbitrator is satisfied that —
  - (a) there are exceptional circumstances that require the medical practitioner to attend the arbitration hearing and give evidence; and

- (b) requiring the attendance of the medical practitioner to give evidence at the arbitration hearing will assist in the determination of the dispute in a manner that is fair, just, economical, informal and quick.

**37. Medical reports**

- (1) In any proceeding, unless leave of an arbitrator is obtained —
  - (a) a medical report by a medical practitioner in a particular area of medical practice cannot be lodged or admitted in evidence on behalf of a party to the proceeding if another medical report by another medical practitioner in that area of medical practice has been lodged or admitted in evidence on behalf of that party; and
  - (b) a medical report by a medical practitioner in a particular area of medical practice cannot be lodged or admitted in evidence on behalf of a party to the proceeding if medical reports in 3 areas of medical practice have been lodged or admitted in evidence on behalf of that party.
- (2) For the purposes of this rule, a medical report in more than 1 area of medical practice is taken to be a medical report in each of those areas of medical practice.
- (3) This rule does not affect the lodging or admission in evidence of a medical report required to be obtained for either of the following reasons —
  - (a) a worker's medical practitioner has ceased treating the worker because —
    - (i) the medical practitioner retired, changed practice or a similar circumstance arose; or
    - (ii) the medical practitioner's practice has been taken over by another medical practitioner;
  - (b) a worker attends a general medical practice and is seen by more than 1 medical practitioner in that same practice from time to time.



## Part 8 — Proceedings before an arbitrator

### Division 1 — General proceedings

#### 38. Consent orders

- (1) An arbitrator may make an order (a *consent order*) in relation to, or determining, the dispute if —
  - (a) a party to the proceeding lodges a memorandum of consent with the Registrar; and
  - (b) the memorandum of consent —
    - (i) is signed by each party, or some of the parties, to the proceeding; and
    - (ii) sets out the terms of the consent order.
- (2) The arbitrator makes the consent order by signing the memorandum of consent lodged under subrule (1)(a).
- (3) The arbitrator cannot make a consent order if the arbitrator is not authorised by the Act to make an order in the terms set out in the memorandum of consent.

#### 39. Party may discontinue proceeding

- (1) A party to a dispute who commences a proceeding may discontinue the whole or part of the proceeding.
- (2) A proceeding is discontinued when the first of the following occurs —
  - (a) a notice of discontinuance is lodged with the Registrar and a copy of the sealed notice is given to each other party to the proceeding;
  - (b) a notice of discontinuance signed by each party to the proceeding is lodged with the Registrar;
  - (c) the arbitrator makes a consent order effecting the discontinuance.

- (3) If a party discontinues a proceeding, the arbitrator may make an order as to costs in accordance with Part 6 Division 9 of the Act and Part 9 of these rules.

**40. Attendance at proceedings held in private**

- (1) The Registrar or an arbitrator may give a direction as to the persons who may be present at a proceeding conducted in private.
- (2) A direction made under subrule (1) is not a decision for the purposes of section 370(a) of the Act.

**41. Arbitrator must not interview individual parties or witnesses**

An arbitrator must not confer with or interview a party or witness in relation to a proceeding, except in a proceeding before the arbitrator.

**42. Statement of agreed facts and issues**

- (1) An arbitrator may order the parties to a proceeding to lodge a signed statement setting out —
- (a) the facts and issues on which the parties agree; and
  - (b) the facts and issues that are in dispute.
- (2) The statement may, at the discretion of the arbitrator, be in the form of —
- (a) a single document for the parties; or
  - (b) a separate document for each party.
- (3) Unless leave of the arbitrator is obtained, the parties are bound by the statement and must not assert to the contrary.

**43. Directions hearing**

Before an arbitration hearing, the Registrar or an arbitrator may convene 1 or more directions hearings to be conducted by an arbitrator for 1 or more of the following purposes —

- (a) to clearly define the issues to be determined;
- (b) to make directions for the fair and efficient conduct of the proceeding;
- (c) to set a date for the arbitration hearing;
- (d) to ensure effective case management of the proceeding.

**Division 2 — Interlocutory applications**

**44. Interlocutory applications**

- (1) A party may lodge an interlocutory application if —
  - (a) the party has consulted each other party affected by the application with a view to resolving the matters giving rise to the application; and
  - (b) the application is endorsed with, or is lodged together with a document containing, a statement, signed by the party or the party's representative, to the effect that the consultation required by paragraph (a) has occurred.
- (2) Despite subrule (1), an arbitrator may permit an interlocutory application to be lodged without the consultation referred to in subrule (1)(a) if the arbitrator is of the view that there are exceptional circumstances that justify lodging the application without the consultation.
- (3) An interlocutory application must include an explanation as to why the subject matter of the application was not addressed in the arbitration application or the reply to the application (as the case requires) or at a directions hearing in respect of the application, if applicable.

- (4) The party who lodges the interlocutory application must, within 2 working days after the day on which the application is accepted by the Registrar, give a copy of the sealed application to each other party to the proceeding.

**45. Reply to interlocutory applications**

- (1) Except as otherwise ordered by an arbitrator, a party who receives a copy of a sealed interlocutory application must, not less than 2 working days before the time fixed for hearing the application —
- (a) lodge a reply by way of a notice —
    - (i) consenting to the application; or
    - (ii) opposing the application and specifying the grounds on which the application is opposed;
  - and
  - (b) give a copy of the sealed notice to each other party to the proceeding.
- (2) The application may be determined as if the party did not dispute any part of the application if —
- (a) the party fails to lodge a reply in accordance with subrule (1)(a); or
  - (b) the party fails to give a copy of the sealed reply to each other party to the proceeding in accordance with subrule (1)(b).

**Division 3 — Arbitration hearings**

**46. Notice of arbitration hearing**

The Registrar must give notice of the time and place for the arbitration hearing to —

- (a) each party to the proceeding; and

- (b) each other person entitled under the Act to receive notice of the arbitration hearing.

**47. Adjournment of arbitration hearing**

- (1) An arbitration hearing can only be adjourned by order of an arbitrator.
- (2) An arbitrator may only grant an adjournment if the arbitrator is satisfied that 1 or more of the parties would be significantly prejudiced if the adjournment were not granted.
- (3) An arbitrator may adjourn an arbitration hearing indefinitely if the arbitrator is satisfied that there are exceptional circumstances that justify an indefinite adjournment.
- (4) If an arbitrator adjourns an arbitration hearing indefinitely under subrule (3), the exceptional circumstances must be recorded in the formal record of the order.

**48. Application for adjournment**

- (1) Subject to rule 49, if a party to a proceeding seeks an adjournment of an arbitration hearing, the party must, not later than 5 working days before the day on which the hearing is listed —
  - (a) lodge an application for an adjournment; and
  - (b) give a copy of the sealed application and accompanying documents to each other party to the proceeding.
- (2) An application for an adjournment of an arbitration hearing must —
  - (a) specify the reason why the adjournment is sought; and
  - (b) be accompanied by documents (such as medical certificates) that support the reason for seeking the adjournment.

**49. Late application for adjournment**

- (1) If an application for an adjournment of an arbitration hearing is made within 5 working days before the day on which the hearing is listed —
  - (a) the application may be made in person; and
  - (b) the arbitrator may adjourn the hearing if the arbitrator is satisfied that there are exceptional circumstances that justify the adjournment.
- (2) The application may be considered —
  - (a) any time after it is made but before the arbitration hearing; or
  - (b) at the arbitration hearing.

**50. Application may be dismissed or determined if adjournment not granted**

- (1) If an application for an adjournment under rule 48 or 49 is to be determined at the arbitration hearing, the parties and their representatives must attend on that day ready to proceed with the arbitration.
- (2) If a party is not ready to proceed on that day, the party must —
  - (a) explain to the arbitrator why the party is not ready to proceed; and
  - (b) make submissions as to why the proceeding should not be dismissed on that day.

**51. Index and record of documents**

- (1) Unless the arbitrator directs otherwise, each party to a proceeding must, not less than 7 days before the arbitration hearing is listed —
  - (a) lodge an indexed and paginated book of documents that the party proposes to adduce at the hearing; and

- (b) give each other party to the proceeding a copy of the sealed book of documents.
- (2) The arbitrator must make a record of the documents that are admitted in evidence at the arbitration hearing.

## **Part 9 — Costs**

### **Division 1 — Preliminary**

#### **52. Terms used**

In this Part —

*assessment of costs* has the meaning given in the *Workers Compensation and Injury Management Regulations 2024* regulation 111;

*costs order* means an order as to costs.

#### **53. Reference to costs determination**

In this Part, a reference to a costs determination is a reference to the costs determination that applied at the time that the costs were incurred.

### **Division 2 — Costs orders**

#### **54. Order as to costs**

- (1) A party to a proceeding may apply to an arbitrator for a costs order.
- (2) An application under subrule (1) —
  - (a) must be in writing; and
  - (b) may include the costs of, or incurred in connection with, the application for conciliation that preceded the arbitration application; and
  - (c) must be accompanied by —
    - (i) a statement of costs claimed; and
    - (ii) copies of any vouchers, accounts and receipts relevant to the costs claimed.



**55. Submissions on application for costs order**

- (1) Except as otherwise ordered by an arbitrator, a party to the proceeding who is given a copy of the sealed application made under rule 54(1) must, within 14 days after receiving the copy of the sealed application —
  - (a) lodge a notice either —
    - (i) consenting to the application; or
    - (ii) opposing the application and specifying the grounds on which the application is opposed;and
  - (b) give a copy of the sealed notice to each other party to the proceeding.
- (2) The application may be determined as if the party did not oppose any part of the application if —
  - (a) the party fails to lodge the notice required by subrule (1)(a); or
  - (b) the party fails to give a copy of the sealed notice to each other party to the proceeding in accordance with subrule (1)(b).

**56. Costs and expenses connected with assessing disputed degree of permanent whole of person impairment (Act s. 79(6))**

If an arbitrator orders an employer to pay all or any of the costs and expenses connected with an assessment under section 79 of the Act, those costs and expenses are to be certified in writing by the Registrar as costs and expenses connected with the assessment.

**Division 3 — Assessment of costs**

**57. Application for assessment of costs**

- (1) For the purposes of the *Workers Compensation and Injury Management Regulations 2024* regulation 111, an application for an assessment of costs must be made to an arbitrator in accordance with subrule (2).
- (2) An application for an assessment of costs must —
  - (a) be in writing; and
  - (b) specify the clause that applies in the costs determination in relation to each cost claimed; and
  - (c) be accompanied by copies of any vouchers, accounts and receipts relevant to the assessment of costs.

## Part 10 — Lodging arbitration documents

### 58. Terms used

In this Part —

*arbitration document* means either of the following —

- (a) an arbitration application;
- (b) any other document that a party to a proceeding is required or permitted under the Act to give to or lodge with the Registrar or an arbitrator;

*EDS* means the electronic document system operated by or on behalf of the Arbitration Service that, amongst other things, enables an arbitration document to be lodged with the Arbitration Service;

*EDS exempt* has the meaning given in rule 62.

### 59. Giving or lodging documents with Registrar or arbitrator

An arbitration document that is required to be given to or lodged with the Registrar or an arbitrator under the Act must be given to or lodged with the Arbitration Service in accordance with this Part.

### 60. Form of arbitration documents

An arbitration document given to or lodged with the Arbitration Service must be —

- (a) either —
  - (i) in the approved form for the purpose of the arbitration document; or
  - (ii) if the Registrar has not approved a form for the purpose of the arbitration document — in a form that is appropriate for the purpose of the arbitration document;

and

**r. 61**

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- (b) clearly written, typed or reproduced (as the case requires); and
- (c) properly completed.

**61. Requirement to lodge arbitration documents using EDS**

- (1) An arbitration document must be lodged with the Arbitration Service using the EDS unless —
  - (a) the person lodging the arbitration document is EDS exempt in relation to that document; or
  - (b) the office of the Arbitration Service is open for business and the EDS is unavailable for use.
- (2) Despite subrule (1)(a), a person who is EDS exempt may use the EDS to lodge an arbitration document.
- (3) The Registrar or an arbitrator may, at any time, require a person who has lodged an arbitration document by using the EDS to produce the original document to the Registrar or arbitrator (as the case requires).

**62. EDS exempt**

- (1) A person who is required to lodge an arbitration document is ***EDS exempt*** in relation to the document at a particular time if, at that time —
  - (a) the person —
    - (i) is self-represented; and
    - (ii) is a party to the proceeding; and
    - (iii) is neither an insurer nor a self-insurer;
  - or
  - (b) the person is exempt under subrule (3) from the requirement to lodge the arbitration document using the EDS.

- (2) A person is self-represented in relation to a proceeding if —
  - (a) in the case of a worker — a representative is not engaged by or on behalf of the worker for the purpose of arbitrating the dispute; or
  - (b) in the case of an employer — the employer is uninsured.
- (3) The Registrar may exempt a person from a requirement to lodge all or any arbitration documents using the EDS if satisfied that it would be unreasonable for the person to be required to use the EDS to lodge the arbitration document.

**63. Lodging arbitration documents if EDS unavailable or person EDS exempt**

- (1) This rule applies if —
  - (a) a person lodging an arbitration document is EDS exempt in relation to that document; or
  - (b) the office of the Arbitration Service is open for business and the EDS is unavailable for use.
- (2) The arbitration document may be lodged by —
  - (a) presenting it at the office of the Arbitration Service when that office is open for business; or
  - (b) sending it to the office of the Arbitration Service by pre-paid post; or
  - (c) sending the document by email when the office of the Arbitration Service is open for business to an email address provided by the Arbitration Service.
- (3) An email by which a document is lodged must —
  - (a) state the sender's name and email address; and
  - (b) state a telephone number by which the sender can be contacted; and
  - (c) describe the document being lodged by the email; and

**r. 64**

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- (d) if more than 1 document is being lodged under this rule — list the documents being lodged.
- (4) The Registrar may determine and publish requirements as to the permissible format and the maximum size of an arbitration document that is sent to the Arbitration Service by email under subrule (2)(c).
- (5) An arbitration document lodged by email under subrule (2)(c) must comply with any published requirements as to the permissible format and the maximum size.
- (6) The Registrar or an arbitrator may, at any time, require a person who has lodged an arbitration document by email under subrule (2)(c) to produce the original document to the Registrar or arbitrator (as the case requires).
- (7) The Registrar or an arbitrator may, at any time, require a person who is EDS exempt in relation to an arbitration document to lodge the document in the manner directed by the Registrar or arbitrator (as the case requires).
- (8) If a person who is not EDS exempt lodges an arbitration document in accordance with subrule (2), the Registrar or an arbitrator may, at any time, require the person to also lodge the document using the EDS.

**64. When arbitration document is taken to have been lodged**

An arbitration document lodged with the Arbitration Service is taken to have been lodged —

- (a) in the case of an arbitration document lodged using the EDS —
  - (i) if the arbitration document becomes accessible using the EDS before 5 pm on a working day — on that working day; or

(ii) if paragraph (i) does not apply — on the next working day after the arbitration document becomes accessible;

or

(b) in the case of an arbitration document lodged in accordance with rule 63(2)(a), (b) or (c) —

(i) if the arbitration document is received before 5 pm on a working day — on that working day;  
or

(ii) if paragraph (i) does not apply — on the next working day after the arbitration document is received.

**65. When Registrar or arbitrator is taken to have given notice or copy of document in relation to arbitration document**

(1) In this rule —

*electronic notification*, in relation to a person, includes notification by an email sent to an email address provided by the person;

*notify* includes to dispatch or send a notice.

(2) A requirement for the Registrar or an arbitrator to notify a person, or to give a person a copy of a document, in relation to an arbitration document is satisfied, on a day, if —

(a) before 5 pm on that day —

(i) the notice or copy of the document becomes accessible to the person using the EDS; and

(ii) electronic notification that the notice or copy of the document is accessible is sent to the person;

or

(b) the notice or copy of the document is sent to the person by pre-paid post 3 business days before that day; or

**r. 65**

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- (c) the notice or copy of the document is sent to an email address provided by the person before 5 pm on that day.
- (3) Subrule (2)(a) does not apply if —
  - (a) the person is EDS exempt in relation to the arbitration document; and
  - (b) the person does not have access to the EDS in relation to the arbitration document.
- (4) This rule does not apply to the requirement that an arbitrator notify a person joined as a party to the proceeding under rule 26(2).



## Part 11 — Giving documents

### 66. Giving documents generally

- (1) Subject to subrule (2), if a document is required under these rules to be given to a person, the document may be given —
  - (a) personally in accordance with rule 68; or
  - (b) by delivering it —
    - (i) if the person is an individual — to the person’s usual place of residence or principal place of business; or
    - (ii) if the person is a partnership or body corporate — to the place that is the partnership’s or body corporate’s principal place of business;or
  - (c) by sending it by pre-paid post —
    - (i) if a postal address has been provided in accordance with rule 67 — to that address; or
    - (ii) if a postal address has not been provided in accordance with rule 67 — to the person’s usual or last known place of residence or principal or last known place of business;or
  - (d) if an email address has been provided in accordance with rule 67 — by sending the document by email to that email address.
- (2) Subrule (1) does not apply if the manner by which the document is to be given is provided for in these rules.
- (3) Nothing in these rules prevents a person from consenting to being given a document in a manner other than in accordance with this rule.

**67. Address for receiving documents**

- (1) If a person who has not appointed a representative lodges an approved form of a document that requires the person to specify an address for receiving documents, the person —
  - (a) must specify a postal address on the document; and
  - (b) may specify an email address on the document.
- (2) If a person who has appointed a representative lodges an approved form of a document that requires the person to specify an address for receiving documents, the person —
  - (a) must specify on the document —
    - (i) the name of the representative; and
    - (ii) the address where the representative conducts their business; and
    - (iii) the postal address of the representative;and
  - (b) with the consent of the representative, may specify either or both of the following —
    - (i) the email address of the representative;
    - (ii) the details of a document exchange approved by the Registrar.
- (3) If an email address is specified as an address for receiving documents in a document lodged under these rules, the person, or the person's representative, is taken to have consented to receiving documents by email to that email address for the purpose of the proceeding.
- (4) If a party's address for receiving documents changes, the party must lodge with the Registrar a notice of change of address not more than 3 working days after the day on which the change occurs.

**68. Giving documents personally**

- (1) A document may be given personally to an individual by —
  - (a) leaving the document with the individual or, if the individual is a person under a legal disability, with the individual's parent, guardian or litigation guardian; or
  - (b) if the individual or the individual's parent, guardian or litigation guardian (as the case requires) does not accept the document — putting it down in the presence of the individual and advising the individual of the nature of the document; or
  - (c) leaving the document with a person who is authorised in writing to receive documents on behalf of the individual; or
  - (d) leaving the document with a person at the individual's usual or last known place of residence who is believed, on reasonable grounds, to have reached 18 years of age; or
  - (e) if applicable — leaving the document with a representative of the individual in the proceeding.
- (2) A document may be given personally to a partnership by —
  - (a) leaving the document with 1 of the partners; or
  - (b) if the partner does not accept the document — putting it down in the partner's presence and advising the partner of the nature of the document; or
  - (c) leaving the document with a person at the partnership's principal or last known place of business who, on reasonable grounds, is believed to be in charge of the business; or
  - (d) if applicable — leaving the document with a representative of the partnership in the proceeding.

- (3) A document may be given personally to a body corporate by —
  - (a) leaving the document with a person who, on reasonable grounds, is believed to be a director, manager or secretary of the body corporate; or
  - (b) if applicable — leaving the document with a representative of the body corporate in the proceeding; or
  - (c) leaving the document with the person apparently in charge of the registered office of the body corporate.
- (4) A document may be given personally to a public authority by —
  - (a) leaving the document with a person who, on reasonable grounds, is believed to be the chief executive officer of the public authority or a person authorised by the chief executive officer to receive documents for the purposes of this paragraph; or
  - (b) if applicable — leaving the document with a representative of the public authority in the proceeding.

**69. Giving documents by email**

- (1) An email by which a document is given must —
  - (a) state the sender's name and email address; and
  - (b) state a telephone number by which the sender can be contacted; and
  - (c) describe the document being lodged by the email; and
  - (d) if more than 1 document is being lodged under this rule — list the documents being lodged.
- (2) An arbitrator may, at any time, require a person who has given a document by email to produce the original document to the arbitrator.

**70. When document is taken to have been given by pre-paid post**

A document given by pre-paid post is taken to have been given on a day if the document is sent to the person 3 business days before that day.

**71. When document is taken to have been given by email**

A document given by email is taken to have been given on the day on which the document is sent by email in accordance with rule 69.

**72. Giving documents by alternative means**

- (1) If for any reason it is impracticable to give a document in the manner set out in rule 66, the Registrar or an arbitrator may order that the document may be given by taking the steps that are set out in the order.
- (2) An application for an order under this rule must —
  - (a) be made by the person required to give the document; and
  - (b) specify the grounds upon which the application is made; and
  - (c) be verified by statutory declaration.
- (3) A document is taken to be given if the steps that are set out in the order are taken.

**73. Requirement to certify the giving of documents**

A person who gives a document in accordance with this Part must, if directed to do so by the Registrar or an arbitrator —

- (a) certify in the approved form that the document was given; and
- (b) lodge the approved form, certified in accordance with paragraph (a), with the Registrar.

## **Part 12 — Miscellaneous**

### **74. Request under Act s. 306**

- (1) A request under section 306(2) or (3) of the Act must be in writing and given to the employer, insurer or WorkCover WA (as the case requires).
- (2) The request must be complied with within 14 days after the day on which the request is received.

### **75. Arbitration Service seal**

- (1) The Arbitration Service —
  - (a) must have a seal; and
  - (b) may have as many seals as the Registrar considers appropriate.
- (2) The seal must be in a form approved by the Registrar and may be in an electronic form.
- (3) All courts and persons acting judicially are required to take judicial notice of the seal of the Arbitration Service affixed to a document.
- (4) If the seal of the Arbitration Service is affixed to a document, a court or person acting judicially is to presume that it was properly affixed unless the contrary is shown.

### **76. Use of seal**

The seal of the Arbitration Service must be affixed to —

- (a) all documents lodged with the Registrar or an arbitrator;  
and
- (b) all documents registered by the Registrar; and
- (c) all notices given, or decisions made, by an arbitrator;  
and

- (d) any other documents that are required to be sealed under these rules.

**77. Approved forms**

The Registrar may approve forms for use in the arbitration of a dispute under Part 6 of the Act.

**78. Amendment of documents**

- (1) An arbitrator may, on the application of a party to a proceeding, give the party leave to amend any document lodged by the party in the proceeding if the arbitrator considers that the amendment is necessary to avoid injustice.
- (2) An amendment may be made at any stage of the proceeding and on such terms as the arbitrator thinks fit.

## **Part 13 — Repeal**

**79. *Workers' Compensation and Injury Management Arbitration Rules 2011* repealed**

*The Workers' Compensation and Injury Management Arbitration Rules 2011* are repealed.





## Notes

This is a compilation of the *Workers Compensation and Injury Management Arbitration Rules 2024*. For provisions that have come into operation see the compilation table.

### Compilation table

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<i>Workers Compensation and Injury Management Arbitration Rules 2024</i>	SL 2024/78 22 May 2024	Pt. 1: 22 May 2024 (see r. 2(a)); Rules other than Pt. 1: 1 Jul 2024 (see r. 2(b))

## Defined terms

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

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
approved form.....	3
arbitration application .....	3
arbitration document .....	58
arbitration hearing.....	3
assessment of costs .....	52
business day .....	3
claimant.....	3
compensation order.....	3
consent order.....	38(1)
costs order.....	52
death compensation application.....	3
EDS.....	58
EDS exempt.....	58, 62(1)
electronic notification .....	65(1)
general application .....	3
give .....	3
interlocutory application .....	3
lodge .....	3
notify.....	65(1)
proceeding.....	3
representative .....	3
requesting party.....	29(1)
second party .....	29(1)
witness statement .....	35(1)
working day .....	3

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