



Western Australia

Workers Compensation and Injury Management Act 2023

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

Workers Compensation and Injury Management Conciliation Rules 2024

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Defined terms

Workers Compensation and Injury Management Conciliation Rules 2024

Part 1 — Preliminary

1. Citation

These rules are the *Workers Compensation and Injury Management Conciliation 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 —

application for conciliation means an application for conciliation made under section 311 of the Act;

certificate of outcome has the meaning given in section 324 of the Act;

conciliation conference means a conciliation conference conducted by a conciliator under section 317 of the Act;

Director approved form means a form approved by the Director under rule 31;

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

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

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

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

4. References to conciliator and dispute

In these rules —

- (a) a reference to a **conciliator** is a reference to a conciliator who has been allocated a dispute under section 314 of the Act; and
- (b) a reference to a **dispute** is a reference to a dispute that is the subject of an application for conciliation.

Part 2 — Applications for conciliation

5. Applications for conciliation to be made in Director approved form

An application for conciliation must be in the Director approved form.

6. Supporting documentation

- (1) An application for conciliation must be accompanied by any document in the applicant's possession or under the applicant's control that will assist the applicant to discharge the onus imposed on them by section 312(3) of the Act.
- (2) If the applicant seeks an order for any of the following, the application for conciliation must also be accompanied by a statement setting out the worker's financial circumstances and reasonable financial needs —
 - (a) additional income compensation under section 52 of the Act;
 - (b) an increase in the medical and health expenses general limit amount under section 77 of the Act;
 - (c) an increase for special expenses in the medical and health expenses general limit amount under section 78 of the Act.
- (3) A statement prepared for the purposes of subrule (2) must be accompanied by documentary evidence in support of the statement.
- (4) The application for conciliation may be accompanied by any other document that is relevant to the conciliation of the dispute.

7. Director to accept or reject application

- (1) In this rule —
exclusion period means the period of 56 days beginning on the day on which a certificate of outcome is issued.
- (2) The Director must, as soon as practicable after an application for conciliation is lodged, accept or reject the application.
- (3) The Director must reject the application for conciliation if —
 - (a) the dispute has previously been the subject of conciliation and the application was lodged during the exclusion period; or
 - (b) the Director is not satisfied that the application sufficiently particularises the substantive issues in dispute; or
 - (c) the Director is not satisfied that reasonable attempts have been made by the applicant to resolve the substantive issues in dispute with each other party to the dispute.
- (4) The Director may reject an application for conciliation if the application —
 - (a) is not complete; or
 - (b) is not lodged in accordance with Part 6; or
 - (c) does not comply with these rules.
- (5) If the Director does not reject an application for conciliation under subrule (3) or (4), the Director must accept the application.
- (6) The Director must notify the applicant —
 - (a) of the decision to reject or accept the application for conciliation; and
 - (b) if the application is rejected — of the reason for rejecting the application.

8. Requirement to give copies of application and other documents

- (1) As soon as 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 document that accompanied the application.
- (2) If a party to the dispute lodges a document with the Director after an application for conciliation has been accepted, the Director must give a copy of that document to each other party to the dispute.

9. Discontinuing conciliation

- (1) The applicant may discontinue conciliation of a dispute, or of an issue in dispute, at any time before conciliation ends under section 319(1)(a), (b) or (c) of the Act.
- (2) Conciliation of the dispute is discontinued when the applicant gives the Director written notice of discontinuance in the Director approved form.
- (3) If the Director receives a notice of discontinuance in accordance with subrule (2), the Director must give a copy of the notice to each other party to the dispute.
- (4) If an applicant discontinues conciliation of the dispute under subrule (1), the conciliator may make an order as to costs in accordance with Part 6 Division 9 of the Act.

Part 3 — Representation

10. Representation

For the purposes of section 365(2)(c) of the Act, the following classes of persons are authorised to represent a party at a conciliation conference —

- (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 or employee 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.

11. Notice of representation

- (1) If a party to a dispute appoints a representative for the purpose of conciliating the dispute, the representative must notify the Director of the appointment by lodging —
 - (a) the first document lodged by the party they represent in the conciliation proceedings; or
 - (b) a notice of appointment in accordance with Part 6 within 3 working days after being appointed.
- (2) If a representative ceases to represent the party, the representative must, within 3 working days of ceasing to be the representative, notify the Director that they have ceased to represent the party.
- (3) If the Director is notified under subrule (1) or (2), the Director must notify each other party to the dispute of the appointment or cessation, as the case requires.

Part 4 — Conduct of conciliation

12. Time limits

- (1) If no time limit is fixed under the Act for doing a thing in relation to the conciliation of a dispute, a conciliator may fix the time limit within which the thing must be done.
- (2) Any document that a party to a dispute proposes to rely on in the conciliation of the dispute must be lodged within the time limit fixed under the Act or by the conciliator under subrule (1).
- (3) A document that is not lodged within the time limit fixed under the Act or by the conciliator under subrule (1) may only be relied on in the conciliation of the dispute at the discretion of the conciliator, having regard to the time when the party lodging the document first obtained the document.

13. Conciliation conferences

- (1) A conciliator must give written notice to a party to a dispute who is required to attend a conciliation conference for the dispute.
- (2) The notice referred to in subrule (1) must specify the date, time and place of the conciliation conference.
- (3) A party to the dispute may attend the conciliation conference —
 - (a) in person; or
 - (b) with the agreement of the conciliator, by telephone or other electronic means of communication.

14. Attendance by persons other than parties

- (1) A person who is not a party to a dispute must not attend at a conciliation conference for the dispute unless the Director or a conciliator directs or permits the person's attendance at the conciliation conference.

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- (2) A person who is directed or permitted to attend at a conciliation conference under subrule (1) must not participate in the conciliation conference unless the Director or a conciliator makes a direction permitting the person's participation in the conciliation conference.
- (3) A person who is directed or permitted to attend at a conciliation conference under subrule (1) does not become a party to the dispute as a result of being directed or permitted to attend.
- (4) A decision or direction made under subrule (1) or (2) is not a decision for the purposes of section 370(a) of the Act.

15. Time limits for conciliation

- (1) For the purposes of section 319(1)(c) of the Act, the time limit for conciliation expires on the day that is 56 days after the day on which the application for conciliation is accepted by the Director.
- (2) The Director may, on the request of the conciliator, extend the time limit in subrule (1) by up to a further 56 days.
- (3) For the purposes of subrule (2) —
 - (a) if the time limit for conciliation is extended more than once — the total cumulative periods of extension must not exceed 56 days; and
 - (b) each request of the conciliator must be made before the time limit for conciliation has expired.

Note for this subrule:

1. The first request of the conciliator must be made before the time limit for conciliation expires under subrule (1).
2. If the Director extends the time limit for conciliation under subrule (2), any subsequent request of the conciliator must be made before the extended time limit for conciliation expires.

- (4) In considering whether to extend the time limit under subrule (2), the Director must have regard to the following —
 - (a) the objectives of conciliation;
 - (b) the particular circumstances relating to the dispute;
 - (c) any recommendations made by the conciliator;
 - (d) any submissions made by a party to the dispute.
- (5) If, under section 367(2) of the Act, the conciliator defers taking action in respect of a dispute, the period beginning on the day after the day on which the conciliator defers taking action and ending on the day before the litigation guardian is appointed under section 367(1) of the Act must be disregarded in calculating the time limit for conciliation.

16. Certificate of outcome

In addition to the matters referred to in section 319(2) of the Act, the certificate of outcome must specify the following —

- (a) the substantive issues in dispute;
- (b) the issues, if any, that have been resolved by agreement (the *agreement*) between the parties;
- (c) subject to section 319(3) of the Act, the terms of the agreement;
- (d) the issues, if any, that have not been resolved;
- (e) whether any issue in dispute was discontinued under rule 9.

17. Directions of conciliators

- (1) In considering whether to make a direction under section 320 or 323 of the Act, the conciliator must have regard to whether, in the conciliator's opinion, each party to the dispute has acted in good faith in their attempt to resolve the dispute.

- (2) An interim compensation direction given by a conciliator in accordance with section 320 of the Act must be in writing and specify —
- (a) the name of the employer directed to make the payment; and
 - (b) whether the payment is for all or any of the following —
 - (i) income compensation;
 - (ii) medical and health expenses compensation;
 - (iii) miscellaneous expenses compensation;
 - (iv) workplace rehabilitation expenses compensation;and
 - (c) if the direction is for income compensation — the period for which income compensation must be made; and
 - (d) if the direction is for miscellaneous expenses compensation or workplace rehabilitation expenses compensation, in a schedule —
 - (i) each amount to be paid; and
 - (ii) the particular expense that corresponds to each amount to be paid.
- (3) A direction given by a conciliator under section 323(2) of the Act to suspend or reduce payments of income compensation must be in writing and specify —
- (a) the name of the employer who is currently making the payments; and
 - (b) the period for which income compensation payments are to be suspended or reduced; and
 - (c) if income compensation payments are to be reduced — the rate or amount of the reduced payments.

- (4) If the conciliator makes a direction in accordance with section 320 or 323 of the Act, the conciliator must, within 3 working days after making the direction, give a copy of the direction to each party to the dispute.
- (5) A copy of the direction is not required to be given under subrule (4) if within 3 working days of giving the direction the certificate of outcome is issued.

Part 5 — Costs

Division 1 — Preliminary

18. 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.

19. 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

20. Costs orders

- (1) A party to a dispute may apply to a conciliator for a costs order.
- (2) An application under subrule (1) must be accompanied by the following —
 - (a) a statement in the Director approved form setting out the costs claimed by the party;
 - (b) evidence that the party has made a reasonable attempt to agree with each other party to the dispute on the amount for which a costs order should be made;
 - (c) copies of any document that is relevant to the costs claimed by the party.
- (3) The conciliator may make a costs order if, and only if, the conciliator is satisfied that —
 - (a) the dispute was resolved by conciliation; or

- (b) after conciliation of the dispute has ended —
 - (i) the dispute was resolved by agreement between the parties; or
 - (ii) the dispute will not be the subject of an application for arbitration under section 331 of the Act.

21. Review of conciliator's decision regarding costs order

- (1) A party to a dispute may apply to the Director for a review of a conciliator's decision to make a costs order or to refuse to make a costs order.
- (2) The Director may hold a conference with the parties to the dispute for the purposes of conducting the review.
- (3) In determining the review, the Director may have regard to —
 - (a) the conciliator's costs order, if any; and
 - (b) the material relating to the costs application that was before the conciliator; and
 - (c) if a conference is held with the parties — any other information provided by a party during the conference; and
 - (d) any other material or information that the Director considers is relevant to the review.
- (4) The Director may do 1 or more of the following —
 - (a) if a costs order is made by the conciliator — set aside the costs order;
 - (b) make a new costs order;
 - (c) remit the matter to the conciliator or a different conciliator for reconsideration.
- (5) A decision of the Director under this rule is a conciliation decision for the purposes of section 329 of the Act.

Division 3 — Assessment of costs

22. 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 a conciliator 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 6 — Lodging conciliation documents

23. Terms used

In this Part —

conciliation document means either of the following —

- (a) an application for conciliation;
- (b) any other document that a party to the dispute is required or permitted under the Act to make, give to or lodge with the Director or a conciliator;

EDS means the electronic document system operated by or on behalf of the Conciliation Service that, amongst other things, enables a conciliation document to be lodged with the Conciliation Service;

EDS exempt has the meaning given in rule 27(1).

24. Giving or lodging documents with Director or conciliator

A conciliation document that is required to be given to or lodged with the Director or a conciliator under the Act must be given to or lodged with the Conciliation Service in accordance with this Part.

25. Form of conciliation documents

A conciliation document given to or lodged with the Conciliation Service must be —

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

and

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

26. Requirement to lodge conciliation documents using EDS

- (1) A conciliation document must be lodged with the Conciliation Service using the EDS unless —
 - (a) the person lodging the conciliation document is EDS exempt in relation to that document; or
 - (b) the office of the Conciliation 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 a conciliation document.
- (3) The Director or a conciliator may, at any time, require a person who has lodged a conciliation document by using the EDS to also lodge the document in person or by post.

27. EDS exempt

- (1) A person who is required to lodge a conciliation 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 dispute; 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 conciliation document using the EDS.

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

28. Lodging conciliation documents if EDS unavailable or person EDS exempt

- (1) This rule applies if —
 - (a) a person lodging a conciliation document is EDS exempt in relation to that document; or
 - (b) the office of the Conciliation Service is open for business and the EDS is unavailable for use.
- (2) The conciliation document may be lodged by —
 - (a) presenting it at the office of the Conciliation Service when the office is open for business; or
 - (b) sending it to the office of the Conciliation Service by pre-paid post; or
 - (c) sending the document by email when the office of the Conciliation Service is open for business to an email address provided by the Conciliation 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

- (d) if more than 1 document is being lodged under this rule — list the documents being lodged.
- (4) The Director may determine and publish requirements as to the permissible format and the maximum size of a conciliation document that is sent to the Conciliation Service by email under subrule (2)(c).
- (5) A conciliation 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 Director or a conciliator may, at any time, require a person who has lodged a conciliation document by email to also lodge the document in person or by post.
- (7) If a person who is not EDS exempt lodges a conciliation document in accordance with subrule (2), the Director or a conciliator may, at any time, require the person to also lodge the document using the EDS.

29. When conciliation document is taken to have been lodged

A conciliation document lodged with the Conciliation Service is taken to have been lodged —

- (a) in the case of a conciliation document lodged using the EDS —
 - (i) if the conciliation 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 conciliation document becomes accessible;

or

- (b) in the case of a conciliation document lodged in accordance with rule 28(2)(a), (b) or (c) —
 - (i) if the conciliation 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 conciliation document is received.

30. When Director or conciliator is taken to have given notice or copy of document in relation to conciliation document

- (1) In this rule —

business day means a day that is not a Saturday, Sunday or public holiday throughout the State;

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 Director or a conciliator to notify a person, or to give a person a copy of a document, in relation to a conciliation 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 2 business days before that day; or
 - (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 conciliation document; and
 - (b) the person does not have access to the EDS in relation to the conciliation document.

Part 7 — Miscellaneous

31. Forms

The Director may approve forms for use in the conciliation of a dispute in accordance with Part 6 of the Act.

32. Request under Act s. 306

- (1) A request by a worker under section 306(2) of the Act must be —
 - (a) in writing; and
 - (b) given to the employer or, if applicable, the employer's insurer.
- (2) A request by a worker under section 306(3) of the Act must be —
 - (a) in writing; and
 - (b) given to WorkCover WA.
- (3) For the purposes of section 306(4) of the Act, the period is 14 days after the day on which the request is received.

33. Orders made under Act s. 322

- (1) An application for an order under section 322(1) of the Act must not be made unless at least 14 days have elapsed since the employer failed to make a payment required by an interim compensation direction.
- (2) As soon as practicable after determining an application under section 322(1) of the Act, the Director must notify the worker, the employer and the employer's insurer of the decision.

Part 8 — Repeal

34. *Workers' Compensation and Injury Management Conciliation Rules 2011* repealed

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

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Notes

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

Compilation table

Citation	Published	Commencement
<i>Workers Compensation and Injury Management Conciliation Rules 2024</i>	SL 2024/79 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.]

Defined term	Provision(s)
agreement.....	16
application for conciliation	3
assessment of costs	18
business day	30(1)
certificate of outcome	3
conciliation conference	3
conciliation document.....	23
conciliator	4
costs order.....	18
Director approved form.....	3
dispute.....	4
EDS.....	23
EDS exempt.....	23, 27(1)
electronic notification	30(1)
exclusion period.....	7(1)
give	3
lodge	3
notify.....	30(1)
representative.....	3
working day	3

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