



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

4741



PERTH, WEDNESDAY, 9 NOVEMBER 2011 No. 215 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.15 PM

© STATE OF WESTERN AUSTRALIA

WORKERS' COMPENSATION AND INJURY
MANAGEMENT ACT 1981

**WORKERS' COMPENSATION
AND INJURY MANAGEMENT
CONCILIATION RULES 2011**

Western Australia

Workers' Compensation and Injury Management Conciliation Rules 2011

CONTENTS

Part 1 — Preliminary

1. Citation
2. Commencement
3. Terms used
4. Application of these rules

Part 2 — Application for conciliation

5. Application for conciliation
6. Accepting or rejecting an application for conciliation
7. Providing copies of applications and other documents
8. Discontinuing conciliation

Part 3 — Representation

9. Notice of representation
10. Litigation guardian

Part 4 — Conduct of conciliation

11. Time limits
12. Conciliation conferences
13. Time limit for conciliation
14. Certificate of outcome
15. Payment directions

Part 5 — Costs

16. Terms used

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

17. Costs

Part 6 — Medical assessment panels

18. Term used: worker
19. Form for requirement to attend
20. Time, date and place of meeting
21. Notice of meeting
22. Giving documents to medical assessment panel
23. Objection to document being given to medical assessment panel

Part 7 — Applications and other documents

24. Term used: document
25. Form of documents
26. Lodging documents
27. Lodging by fax
28. Lodging through Internet
29. Day of lodgment

Part 8 — Miscellaneous

30. Forms
31. Section 180 request
32. Section 182ZL order

Workers' Compensation and Injury Management Act 1981

Workers' Compensation and Injury Management Conciliation Rules 2011

Made by the Minister under section 293A of the Act.

Part 1 — Preliminary

1. Citation

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

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* Part 2 comes into operation.

3. Terms used

- (1) In these rules —
 - (a) the dispute to which an application for conciliation relates is referred to as the *dispute*; and

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 1** Preliminary**r. 4**

(b) the conciliation officer to whom the dispute is for the time being allocated under section 182G is referred to as the *conciliation officer*.

(2) In these rules, unless the contrary intention appears —

applicant means the party to the dispute who lodges an application for conciliation;

approved form means a form approved under rule 30;

certificate of outcome means a certificate under section 182O(2);

conciliation conference means a conciliation conference conducted by the conciliation officer under section 182J;

conciliation question means a question referred to a medical assessment panel by the conciliation officer;

payment direction means a direction under section 182K(2), (4) or (7) or 182L(2) or (4);

representative means a legal practitioner or registered agent appointed to represent a party to the dispute under section 182S(1);

section means a section of the Act;

working day, in relation to an application for conciliation, means any day other than a Saturday, a Sunday or a day which is a public holiday in the area where the conciliation is conducted.

4. Application of these rules

(1) In this rule —

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

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

Workers' Compensation and Injury Management Conciliation Rules 2011

Preliminary

Part 1

r. 4

- (2) These rules apply to —
 - (a) an application for conciliation; and
 - (b) a transferred proceeding.
- (3) Subject to any directions given under Schedule 8 clause 2(3) of the Act, a step taken in a transferred proceeding before the commencement of these rules and in accordance with the former rules has effect as if it was taken in accordance with these rules.

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 2** Application for conciliation**r. 5**

Part 2 — Application for conciliation**5. Application for conciliation**

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

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

6. Accepting or rejecting an application for conciliation

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

Workers' Compensation and Injury Management Conciliation Rules 2011
Application for conciliation **Part 2**

r. 7

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

7. Providing copies of applications and other documents

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

8. Discontinuing conciliation

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

Workers' Compensation and Injury Management Conciliation Rules 2011
Part 3 Representation

r. 9

Part 3 — Representation

9. Notice of representation

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

10. Litigation guardian

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

Workers' Compensation and Injury Management Conciliation Rules 2011

Conduct of conciliation

Part 4**r. 11****Part 4 — Conduct of conciliation****11. Time limits**

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

12. Conciliation conferences

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

13. Time limit for conciliation

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

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 4** Conduct of conciliation**r. 14**

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

14. Certificate of outcome

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

- (a) the dispute to be resolved; and
- (b) any matter in dispute that has been resolved by agreement between the parties; and
- (c) subject to section 182O(3), the terms of that agreement; and

Workers' Compensation and Injury Management Conciliation Rules 2011

Conduct of conciliation

Part 4**r. 15**

- (d) any matter in dispute that has not been resolved; and
- (e) if conciliation of a matter in dispute was discontinued under rule 8, that fact.

15. Payment directions

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

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 4** Conduct of conciliation**r. 15**

- (4) A payment direction given under section 182L(2) must set out —
- (a) the name of the employer by whom payment is being made; and
 - (b) subject to section 182L(3), the period for which weekly payments are to be suspended or reduced; and
 - (c) if weekly payments are to be reduced, the rate or amount of the reduced weekly payment.
- (5) In exercising the power to make a payment direction, the conciliation officer must have regard to whether, in the conciliation officer's opinion, each party to the dispute is making endeavours in good faith to facilitate the resolution of the dispute.

Workers' Compensation and Injury Management Conciliation Rules 2011

Costs

Part 5**r. 16****Part 5 — Costs****16. Terms used**

In this Part —

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

costs order means an order as to costs.

17. Costs

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

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 5** Costs**r. 17**

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

Workers' Compensation and Injury Management Conciliation Rules 2011

Medical assessment panels

Part 6**r. 18****Part 6 — Medical assessment panels****18. Term used: worker**

In this Part —

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

19. Form for requirement to attend

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

20. Time, date and place of meeting

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

21. Notice of meeting

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

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

and

Workers' Compensation and Injury Management Conciliation Rules 2011
Part 6 Medical assessment panels

r. 22

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

22. Giving documents to medical assessment panel

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

23. Objection to document being given to medical assessment panel

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

Workers' Compensation and Injury Management Conciliation Rules 2011

Medical assessment panels

Part 6**r. 23**

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

Workers' Compensation and Injury Management Conciliation Rules 2011**Part 7** Applications and other documents**r. 24**

Part 7 — Applications and other documents**24. Term used: document**

In this Part —

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

25. Form of documents

Every document —

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

26. Lodging documents

- (1) Every document must be lodged with the Conciliation Service.
- (2) A document may be lodged with the Conciliation Service —
 - (a) by presenting it at the office of the Conciliation Service when the office is open for business; or
 - (b) by sending it to the office of the Conciliation Service by pre-paid post; or
 - (c) by sending it to the Conciliation Service by fax in accordance with rule 27; or
 - (d) if a website of the Conciliation Service which includes a link for the lodgment of documents under these rules has been established, by sending it to the Conciliation Service through the Internet in accordance with rule 28 and the requirements published on the website.

Workers' Compensation and Injury Management Conciliation Rules 2011
Applications and other documents **Part 7**

r. 27

- (3) The Director may at any time require a person who has lodged a document by fax or through the Internet to lodge the document in person or by post.

27. Lodging by fax

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

Workers' Compensation and Injury Management Conciliation Rules 2011
Part 7 Applications and other documents

r. 28

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

28. Lodging through Internet

- (1) A document lodged electronically through the Internet must be sent through the link maintained for that purpose on the website of the Conciliation Service.
- (2) A document lodged electronically through the Internet must show, in any place in which a person's signature would ordinarily be shown in a physical document, the name of the person whose signature would ordinarily be shown there.

29. Day of lodgment

A document is taken to have been lodged —

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

Workers' Compensation and Injury Management Conciliation Rules 2011

Miscellaneous

Part 8**r. 30****Part 8 — Miscellaneous****30. Forms**

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

31. Section 180 request

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

32. Section 182ZL order

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

SIMON O'BRIEN, Minister for Commerce.