



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

4447



PERTH, FRIDAY, 6 NOVEMBER 2009 No. 202 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 (DRD) Amendment Rules 2009

Made by the Commissioner under section 293 of the Act after consultation with the Director.

1. Citation

These rules are the *Workers' Compensation (DRD) Amendment Rules 2009*.

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 after that day.

3. Rules amended

These rules amend the *Workers' Compensation (DRD) Rules 2005*.

4. Rule 10 amended

In rule 10(2)(b) delete “for each other such person.” and insert:

that is to be returned to the person filing the document so that he or she can arrange for it to be served on each other person.

Workers' Compensation (DRD) Amendment Rules 2009**r. 5**

5. Rule 11 amended

- (1) In rule 11(4) delete "fax." and insert:

fax unless the Director has, before the filing, given permission under subrule (5A).

- (2) After rule 11(4) insert:

- (5A) The Director may give a person permission to file a document by fax if the Director feels that —

- (a) a refusal to give the permission would occasion undue hardship to the person; or
- (b) it is warranted given the urgency of the circumstances.

- (3) In rule 11(5):

- (a) in paragraph (c) delete "authority." and insert:

authority; and

- (b) after paragraph (c) insert:

- (d) attach a copy of, or otherwise confirm on the coversheet of the fax, the Director's permission under subrule (5A).

- (c) after paragraph (a) insert:

and

Workers' Compensation (DRD) Amendment Rules 2009

r. 6**6. Rule 13 amended**

- (1) In rule 13(1):
 - (a) delete "will" and insert:

may
 - (b) in paragraph (b) delete "authority," and insert:

authority.
 - (c) delete "unless the Director is of the opinion that the non-compliance in relation to the document is trivial."
- (2) Delete rule 13(3) and insert:
 - (3) Except as provided in subrule (4A), a dispute resolution authority may, on the authority's own motion or on the application of a party to the dispute, vary or revoke a decision by the Director under this rule.
 - (4A) The dispute resolution authority must not exercise the power conferred by subrule (3) on its own motion if the decision of the Director relates to a document commencing a proceeding.
- (3) In rule 13(6):
 - (a) after "party" insert:

written

Workers' Compensation (DRD) Amendment Rules 2009**r. 7**

- (b) after "refusal" insert:
as soon as practicable but in any event
- (c) delete "5 days" and insert:
3 days
- (d) delete "sent." and insert:
received by the DRD.

7. Rule 14 amended

- (1) In rule 14(1)(b) before "on the insurer" insert:
except as provided in subrule (2A),
- (2) After rule 14(1) insert:
 - (2A) Subrule (1)(b) does not require an employer to serve a document on the employer's insurer unless there is a dispute between the employer and the insurer.

8. Rule 15 amended

After rule 15(2) insert:

- (3) A document that is served by pre-paid post is, in the absence of evidence to the contrary, to be taken to have been served 3 business days after the day on which it was posted.

Workers' Compensation (DRD) Amendment Rules 2009

r. 9**9. Rule 17 amended**

- (1) In rule 17(1):
 - (a) delete “a residential,” and insert:

the residential,
 - (b) delete “documents.” and insert:

documents of the person filing the documents.
- (2) In rule 17(6) delete “after the filing of documents,”.

10. Rule 21 replaced

Delete rule 21 and insert:

21. Certificate of service

- (1) In this rule —

certificate of service means a certificate of service in the approved form;

file means file with the Director.
- (2) Except as provided in this rule, a party who serves a document must file a certificate of service in accordance with an order, if any, of a dispute resolution authority.
- (3) An person who files an application under Part XII of the Act must file a certificate of service within 7 days after serving a copy of the application.
- (4) A party who serves a copy of a notice of discontinuance on another party under rule 27(2) must

Workers' Compensation (DRD) Amendment Rules 2009**r. 11**

file a certificate of service within 7 days after serving the copy.

- (5) A party who obtains an order for substituted service must file a certificate of service within 7 days after complying with the order.

11. Rule 23 amended

- (1) In rule 23(1) delete “must file with the Director notice of that change and serve a copy on the other parties.” and insert:

must —

- (a) file with the Director notice of that change and of the party's new address for service; and
- (b) serve a copy on the other parties.
- (2) In rule 23(2) delete “within 3 days of” and insert:

as soon as practicable, and in any event not more than 3 days, after

12. Rule 24 amended

In rule 24(2) delete “within 3 days of” and insert:

as soon as practicable, and in any event not more than 3 days, after

Workers' Compensation (DRD) Amendment Rules 2009

r. 13**13. Rule 27 amended**

Delete rule 27(2) and insert:

- (2) A discontinuance takes effect when —
- (a) a notice of discontinuance in the approved form is filed with a dispute resolution authority and a copy of the notice is served on the other parties to the proceeding; or
 - (b) a dispute resolution authority makes a consent order effecting the discontinuance,
- whichever occurs first.

14. Rule 28 amended

- (1) In rule 28(2) delete “An arbitrator” and insert:

A dispute resolution authority

- (2) Delete rule 28(3) and insert:

- (3) A dispute resolution authority is not to adjourn a proceeding indefinitely unless there are exceptional circumstances that justify such an adjournment.

15. Rule 32A inserted

After rule 31 insert:

32A. Interlocutory applications

- (1) In this rule —

interlocutory application means any of the following —

- (a) an application for leave to amend a document;

Workers' Compensation (DRD) Amendment Rules 2009**r. 15**

- (b) an application for leave to file a late document;
 - (c) an application for leave to file late evidence;
 - (d) an application for leave to join a party;
 - (e) an application for leave to adduce oral evidence;
 - (f) an application for leave to produce an additional expert witness report;
 - (g) an application for leave to call oral evidence from a medical practitioner;
 - (h) an application for an adjournment;
 - (i) an application for an order for costs, or the assessment of costs, made in existing proceedings;
 - (j) a request for an arbitrator to issue an order under section 193 of the Act for the production of documents or material;
 - (k) any other application or request for an order, except an order that finally determines a dispute between parties.
- (2) An interlocutory application must be made in the approved form or in a manner approved by the dispute resolution authority to which the application is made.
- (3) Except as permitted under subrule (4), a party must not file an interlocutory application unless —
- (a) the party has conferred with 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 filed together with a document containing, a statement, signed by the party or the party's legal practitioner or registered agent, to the

Workers' Compensation (DRD) Amendment Rules 2009

r. 16

effect that the conferral under paragraph (a) has taken place.

- (4) A dispute resolution authority may permit an application to be filed without the conferral referred to in subrule (3)(a) if it is of the view that there are exceptional circumstances justifying the filing of the application without the conferral.

16. Rule 32 amended

In rule 32(1):

- (a) in paragraph (a) delete “determining” and insert:

in relation to, or determining,

- (b) delete “determine the dispute as between those parties by making” and insert:

make

17. Rule 33 replaced

Delete rule 33 and insert:

33. Hearings to be held in private

A hearing or conference before an arbitrator is to be conducted in private unless the arbitrator decides that it should be conducted in public.

Workers' Compensation (DRD) Amendment Rules 2009**r. 18**

18. Rule 58 amended

- (1) In rule 58(1):
 - (a) delete “on which” and insert:

that
 - (b) delete “rely” and insert:

adduce in evidence
- (2) In rule 58(3):
 - (a) delete “rely on a document or on” and insert:

adduce a document or other
 - (b) in paragraph (a) delete “upon which” and insert:

that
 - (c) in paragraph (a) delete “rely; and” and insert:

adduce; and
- (3) In rule 58(5) after “admitted” insert:

in evidence

Workers' Compensation (DRD) Amendment Rules 2009

r. 19**19. Rule 59 amended**

In rule 59(3):

- (a) in paragraph (a) delete “reasonable” and insert:

full

- (b) in paragraph (b) delete “party.” and insert:

party and the issues for determination by the arbitrator.

20. Rule 61 amended

- (1) In rule 61(1):

- (a) delete “on which that” and insert:

that the

- (b) delete “rely” and insert:

adduce in evidence

- (2) In rule 61(5):

- (a) delete “rely on” and insert:

adduce in evidence

- (b) delete “on material” and insert:

other material

Workers' Compensation (DRD) Amendment Rules 2009**r. 21**

- (c) in paragraph (a) delete “rely; and” and insert:
adduce; and

21. Rule 62 amended

- (1) In rule 62(1) delete “Where a reply to an application (other than an application by an employer under section 62 of the Act) raises” and insert:

Except as provided in subrule (2A), where a reply to an application raises

- (2) After rule 62(1) insert:

- (2A) An applicant under section 60 or 62 of the Act cannot file a response under subrule (1) without leave from an arbitrator.
- (2B) An arbitrator is to give the leave referred to in subrule (2A) only if he or she thinks it is necessary in the interests of justice.

22. Rule 63 amended

- (1) In rule 63(1) delete “on which that party proposes to rely” and insert:

that the party proposes to adduce in evidence

- (2) In rule 63(3):
(a) delete “rely on” and insert:
adduce in evidence

Workers' Compensation (DRD) Amendment Rules 2009

r. 23

- (b) delete “on material” and insert:
other material
- (c) in paragraph (a) delete “rely; and” and insert:
adduce; and

23. Rule 64 amended

- (1) In rule 64(1) delete “will not be available for use” and insert:
must not be adduced in evidence
- (2) In rule 64(2):
 - (a) in paragraph (a) delete “the use of the relevant document;” and insert:
the relevant document being adduced in evidence; or
 - (b) in paragraph (b) delete “its use; or” and insert:
it being adduced; or
 - (c) in paragraph (c) delete “for use” and insert:
in evidence

24. Rule 65 amended

- In rule 65(1) delete “admit for use” and insert:
adduce in evidence

Workers' Compensation (DRD) Amendment Rules 2009**r. 25**

25. Rule 66 amended

- (1) In rule 66(1) delete “Upon the filing of a certificate of service of an application for determination of a dispute an arbitrator may” and insert:

An arbitrator may, at any time,

- (2) Delete rule 66(2).

26. Rule 67 amended

In rule 67(1) delete “parties.” and insert:

parties and any issues —

- (a) in relation to the application, reply and response, if any; or
- (b) raised at the teleconference.

27. Rule 70 amended

After rule 70(1) insert:

- (2A) The statement may, at the discretion of the arbitrator, be either in the form of a single document or a separate document for each party.

28. Rule 71 amended

- (1) After rule 71(1) insert:

- (2A) The arbitrator is to give to each party written notice of the direction and of the time and place of the hearing.

Workers' Compensation (DRD) Amendment Rules 2009

r. 29

(2) After rule 71(3) insert:

- (4) Unless the arbitrator expressly directs otherwise, each party must, at the start of the hearing, give to the arbitrator and every other party an index of the documents that the party intends to adduce in evidence at the hearing.
- (5) An arbitrator at a hearing is to record the documents that are admitted in evidence.

29. Rule 74 amended

In rule 74(2) delete “rely” and insert:

adduce in evidence

30. Rule 75 amended

In rule 75(3) delete “reasonable” and insert:

full

31. Rule 76 amended

In rule 76(1) delete “rely” and insert:

adduce in evidence

Workers' Compensation (DRD) Amendment Rules 2009**r. 32**

32. Rule 89 amended

- (1) In rule 89(1) delete “rely on the oral evidence of” and insert:

adduce oral evidence from

- (2) After rule 89(5) insert:

- (6) If a statement required to be filed under subrule (1) or (2) makes reference to a document except a medical report to which rule 91 applies, then the document must not be adduced into evidence unless a copy of that document is attached to the statement or is, in the opinion of the arbitrator, otherwise sufficiently identified.

33. Rule 91 amended

- (1) In rule 91(1):

- (a) in paragraph (a) delete “admitted” (each occurrence) insert:

filed or admitted in evidence

- (b) in paragraph (b) delete “admitted” (each occurrence) insert:

filed or admitted in evidence

Workers' Compensation (DRD) Amendment Rules 2009

r. 34

- (2) In rule 91(3):
- (a) delete “use” and insert:

filing or admission in evidence
 - (b) before “admitted” insert:

filed or
- (3) In rule 91(4) delete “use” and insert:

filing or admission in evidence

34. Rule 95 amended

- In rule 95(2):
- (a) in paragraph (f) delete “not.” and insert:

not; and
 - (b) after paragraph (f) insert:

(g) if the respondent intends to submit a ground for upholding the decision under appeal that was not relied upon by the arbitrator, a notice specifying that ground.
 - (c) after each of paragraphs (a) to (d) insert:

and

Workers' Compensation (DRD) Amendment Rules 2009**r. 35**

35. Rule 99 amended

In rule 99(1):

- (a) delete "filed with" and insert:

made to

- (b) delete "in the approved form setting out" and insert:

or the arbitrator, as the case requires, and must be accompanied by

36. Rule 100 amended

In rule 100(1) delete "filed with the Director in the approved form." and insert:

made to the Director or the arbitrator, as the case requires.

Date: 29 October 2009.

P. McCANN, Commissioner.
