



Western Australia

Workers' Compensation and Injury Management Act 1981

## **Workers' Compensation and Injury Management Arbitration Rules 2011**



# **Workers' Compensation and Injury Management Arbitration Rules 2011**

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## **Workers' Compensation and Injury Management Arbitration Rules 2011**

### **Part 1 — Preliminary**

#### **1. Citation**

These rules are the *Workers' Compensation and Injury Management Arbitration Rules 2011*<sup>1</sup>.

#### **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**

In these rules, unless the contrary intention appears —

***application for arbitration*** means an application under section 182ZT;

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

***arbitration question*** means a question referred to a medical assessment panel or a specialised retraining assessment panel by an arbitrator or the Registrar;

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***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;

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

***section*** means section of the Act;

***serve*** has a meaning affected by rule 16;

***working day***, in relation to a proceeding, means a day other than a Saturday, a Sunday or a day which is a public holiday in the area where the proceeding concerned is conducted.

*[Rule 3 amended in Gazette 12 Jun 2015 p. 2045.]*

**4. Relief from procedural requirements**

- (1) An arbitrator may, in a particular case, as the arbitrator thinks is necessary in the interests of justice or otherwise to give effect to the Act —
  - (a) extend or abridge a time limit for doing any thing under these rules, or the commencement of any thing under these rules; or
  - (b) waive compliance with any other procedural requirement or prohibition under these rules.
- (2) The extension or waiver may be given even though the time for complying has passed.
- (3) This rule does not apply in relation to the time limit for lodging an application for arbitration.

**5. Arbitrator may fix time**

If no time is fixed for the doing of any thing under the Act or these rules for the doing of any thing in connection with a proceeding, an arbitrator may fix the time within which the thing must be done.



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

- (1) An arbitrator may at any time issue a written order to a party to a proceeding requiring the party to obey a requirement of these rules.
- (2) The order —
  - (a) may be issued to a party without having notified or heard the party; and
  - (b) must state a date on or before which the order must be obeyed; and
  - (c) must be served on the party at least 3 working days before the date on which the party has to obey it.
- (3) This rule does not limit an arbitrator's other powers under these rules to make orders.

## **Part 2 — Lodging documents**

### **7. 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 Registrar or an arbitrator by a party or a representative of a party.

### **8. 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 Registrar; and
- (b) must be clearly written, typed or reproduced; and
- (c) must be properly completed.

### **9. Lodging documents**

- (1) Every document must be lodged with the Arbitration Service.
- (2) A document may only be lodged with the Arbitration Service —
  - (a) by presenting it at the office of the Arbitration Service when the office is open for business; or
  - (b) by sending it to the office of the Arbitration Service by pre-paid post; or
  - (c) by sending it to the Arbitration Service by fax in accordance with rule 10; or
  - (d) if a website of the Arbitration Service which includes a link for the lodgment of documents under these rules has been established, by sending it to the Arbitration Service through the Internet in accordance with rule 11 and the requirements published on the website.

- (3) The Registrar 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.
- (4) A person lodging a document in person or by post must, at the same time —
  - (a) lodge a copy to be returned to the person; and
  - (b) if the Act or these rules require a copy of the document to be served on another person, lodge a copy that is to be returned to the person lodging the document so that the person can arrange for it to be served.

**10. Lodging by fax**

- (1) The Registrar 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 for the Arbitration Service 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 Registrar has, before the document is lodged, given permission under subrule (4).
- (4) For the purposes of subrule (3), the Registrar may give a person permission to lodge a document by fax if the Registrar is of the opinion that —
  - (a) a refusal to give the permission would occasion undue hardship to the person; or

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- (b) it is warranted by the urgency of the situation.
- (5) If the Registrar gives permission under subrule (4) to lodge a document by fax, the person lodging the document must include a copy of the permission with the fax, or otherwise confirm the permission on the cover page of the fax.
- (6) A person who lodges a document 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 Arbitration 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 an arbitrator, produce the items referred to in paragraph (b) to the arbitrator.

**11. 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 Arbitration 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.

**12. 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.

**13. Registrar must accept or reject document**

- (1) As soon as is reasonably practicable after a document is lodged, the Registrar must accept or reject it.
- (2) The Registrar may reject a document that —
  - (a) is not properly completed or properly lodged; or
  - (b) is not accompanied by materials 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) Unless the Registrar rejects a document, the Registrar must accept it and affix the Arbitration Service's seal to it.
- (5) The Registrar must notify the person who lodged the document of the acceptance or rejection and, in the case of rejection, the reasons for the rejection.

**14. Review of Registrar's decision to reject document**

- (1) This rule does not apply to a decision of the Registrar to reject an application for arbitration.
- (2) An arbitrator may, on the arbitrator's own volition or on the application of the person who lodged the document, vary or revoke a decision of the Registrar under rule 13 to reject a document.
- (3) An application under this rule may be determined in the absence of any party.

## **Part 3 — Serving documents**

### **15. Party who lodges document must serve copy on other parties**

- (1) In this rule —  
*sealed copy* means a copy of a document sealed under rule 13(4) and returned to the applicant by the Registrar.
- (2) Except as provided in subrule (3), a party who lodges a document that is accepted by the Registrar must serve a sealed copy of the document on each other party.
- (3) An employer is not required under subrule (2) to serve a document on the employer's insurer unless there is a dispute between the employer and the insurer.
- (4) Unless these rules provide otherwise or it is otherwise ordered by the Registrar, the document must be served under subrule (2) within 7 days after the day on which it is accepted by the Registrar.

### **16. Serving documents**

- (1) If these rules require a document to be served on a person, the document must be served —
  - (a) by personal service under rule 18; 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 under rule 17, to that address; or
    - (ii) if a postal address has not been provided under rule 17, to the person's usual or last known place of residence or principal or last known place of business;
  - or
  - (d) if a fax number for service has been provided under rule 17, by sending it by fax to that number.
- (2) Nothing in these rules prevents a person from consenting to being served with a document in a manner other than in accordance with this rule.

**17. Address for service**

- (1) If an approved form of a document requires the provision of an address for service and the person lodging the form is not represented by a legal practitioner or registered agent, the person lodging the document —
- (a) must specify on the document a postal address for service; and
  - (b) in addition, may specify on the document one fax number for service.
- (2) If the person lodging the document is represented by a legal practitioner or a registered agent, the person lodging the document —
- (a) must specify on the document —
    - (i) the name of the legal practitioner or agent; and
    - (ii) the address where the legal practitioner conducts business as a legal practitioner or agent; and
    - (iii) the practitioner's postal address;
- and

- (b) with the legal practitioner's or agent's consent, may state any or both of the following —
    - (i) one fax number;
    - (ii) the details of a document exchange approved by the Registrar,that can be used to serve documents on the legal practitioner or agent.
- (3) If a party's address for service changes, the party must lodge with the Registrar a notice of change of address not more than 3 working days after the change occurs.
- (4) If a document specifies a fax number of a person, the person is to be taken to have consented to being served with documents by fax at that fax number.

**18. Personal service**

- (1) A document may be served personally on 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 may be, does not accept the document, putting it down in his or her presence and advising him or her 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) leaving the document with a legal practitioner or registered agent who is representing the individual in the proceeding.



- (2) A document may be served personally on a partnership by —
  - (a) leaving the document with one 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 at the time of service; or
  - (d) handing the document to a legal practitioner or registered agent who is representing the partnership in the proceeding.
- (3) A document may be served personally on 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) leaving the document with a legal practitioner or registered agent who is representing the body corporate in the proceeding; or
  - (c) leaving the document to the person apparently in charge of the registered office of the body corporate.
- (4) A document may be personally served on 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) leaving the document with a legal practitioner or registered agent who is representing the public authority in the proceeding.

**19.        Service by fax**

- (1) A document served by fax must be sent with a cover page that states —
  - (a) the person to whom the fax is addressed; and
  - (b) the sender's name and postal address; and
  - (c) those of the sender's document exchange number, telephone number and fax number that can be used to contact the sender; and
  - (d) the total number of pages (including the cover page and attachments) being sent.
- (2) A person who serves a document 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 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 proceedings to which the documents relate; and
  - (c) if directed to do so by an arbitrator, produce the items referred to in paragraph (b) to the arbitrator.

**20.        Time of service**

- (1) A document served by pre-paid post is, in the absence of evidence to the contrary, to be taken to have been served 3 working days after the day on which it was posted.
- (2) A document that is served by fax is, in the absence of evidence to the contrary, to be taken to have been served —
  - (a) if the whole of the document is sent before 5.00 p.m. on a working day, on that day;

- (b) otherwise, on the next working day.

**21. Substituted service**

- (1) If for any reason it is impracticable to serve a document in the manner set out in rule 16, an arbitrator or the Registrar may order that the document may be served by taking such steps as are set out in the order.
- (2) An application for an order under this rule must —
  - (a) be made by the person required to serve the document; and
  - (b) set out the grounds upon which the application is made; and
  - (c) be verified by statutory declaration.
- (3) A document is to be taken to be served if such steps as are set out in the order are taken.

**22. Certificate of service**

A person who serves a document must lodge a certificate of service with the Registrar —

- (a) if the document is a sealed copy of an application under rule 24(1) for an extension of time; or
- (b) in any other case, if an arbitrator or the Registrar so directs.

*[Rule 22 inserted in Gazette 12 Jun 2015 p. 2045.]*

## **Part 4 — Applications for arbitration**

### **23. Time limit for lodging application for arbitration**

- (1) An application for determination of a dispute by arbitration may be lodged within 28 days after the day on which —
  - (a) a certificate in respect of the dispute is issued by the Director under section 182H stating that no matter in dispute is suitable for conciliation; or
  - (b) a certificate in respect of the dispute is issued by a conciliation officer under section 182O identifying the matter or matters in dispute that have not been resolved by conciliation.
- (2) If an application for arbitration lodged within the period of time allowed under this rule or rule 24 is rejected by the Registrar under rule 13, the applicant may, within the 28 day period referred to in subrule (1), rectify the application and lodge it again.

### **24. Registrar may extend time for lodging application for arbitration**

- (1) The Registrar may, on application by a party, extend the period of time allowed by rule 23(1) for lodging an application for arbitration if the Registrar is satisfied that extenuating circumstances exist in which it is proper to do so.
- (2) Section 182 applies to the application as if it were an application for arbitration.
- (3) Any party on whom the application for extension is served, may, within 7 days after the application is served, make a written submission to the Registrar as to the extension of the period.
- (4) A party who makes a submission under subrule (3) must serve a copy of the submission on the applicant for the extension and each person served with a copy of the application.

- (5) The extension may be given even though the time for lodging the application for arbitration has passed.
- (6) 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.

**25. Material to be lodged and served with application for arbitration**

- (1) A person lodging an application for arbitration must —
  - (a) lodge with the application; and
  - (b) serve on each party on whom a copy of the application is required under section 182 to be served,  
  
copies of all documents, material and information, whether issued under the Act or otherwise, that the applicant proposes to adduce in evidence in the determination of the dispute.
- (2) Without limiting subrule (1), the documents, material and information referred to in that subrule include the following —
  - (a) certificates, reports and a list of the names of medical practitioners consulted;
  - (b) reports of approved vocational rehabilitation providers;
  - (c) statements of the substance of any expert evidence, other than evidence referred to in paragraph (a);
  - (d) the witness statements referred to in rule 57(1) and statements referred to in rule 57(2).
- (3) If the applicant proposes to adduce a document or other material or information but is unable to provide the document, material or evidence in accordance with subrule (1), the applicant must specify in detail —
  - (a) the document, material or information that the applicant intends to adduce; and
  - (b) the reason why that document, material or information cannot be lodged with the application.

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- (4) The applicant must —
- (a) provide copies of any document, material or information specified in an application in accordance with subrule (3) with the Registrar; and
  - (b) provide copies of the document, material or information to the other parties,

not less than 28 days, or any shorter period specified in the practice notes, before the hearing of the proceeding.

- (5) Subrules (3) and (4) do not apply in respect of the following —
- (a) an application under section 60 for an order that weekly payments be discontinued or reduced;
  - (b) an application under section 62 for the review of weekly payments;
  - (c) an application under section 71 for the refund of compensation or expenses;
  - (d) an application under section 72A for an order that weekly payments be suspended or discontinued,

and no document, material or information other than documents, material or information lodged under subrule (1) may be admitted in evidence on behalf of the applicant in such a proceeding.

*[Rule 25 amended in Gazette 12 Jun 2015 p. 2045.]*

**26. Application for order as to total liability (section 217) or additional expenses (clause 18A)**

- (1) 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),

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

- (2) This rule operates in addition to the other requirements of this Part.

**27. Reply to application**

- (1) A party who has been served with an application for arbitration must lodge a reply to the application within 14 days after the day on which the application is served on the party.
- (2) The reply must —
  - (a) state concisely, but with full particularity —
    - (i) what parts of the application, if any, are admitted by the party; and
    - (ii) what parts of the application, if any, are disputed by the party;
  - and
  - (b) give full particulars of the grounds on which the relevant parts of the application are disputed by the party and the issues for determination by the arbitrator.

**28. Procedure where party does not reply**

- (1) If a party on whom an application for arbitration has been served fails to lodge a reply in accordance with these rules, the dispute in respect of which the application is made may be determined as if that party did not dispute any part of the application.
- (2) An arbitrator may make any order the arbitrator thinks fit to deal with the application.

**29. Material to be lodged and served with reply**

- (1) A party on whom an application for arbitration is served must —
  - (a) lodge with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,

copies of all documents, material and information, whether issued under the Act or otherwise, that the party proposes to adduce in evidence in the determination of the dispute.

- (2) Without limiting subrule (1), the documents, material and information referred to in that subrule include —
- (a) certificates and reports of medical practitioners;
  - (b) reports of approved vocational rehabilitation providers;
  - (c) statements of the substance of any expert evidence, other than evidence referred to in rule 25(2)(a);
  - (d) the witness statements referred to in rule 57(1) and statements referred to in rule 57(2).
- (3) If the party on whom an application is served is a worker, the party must —
- (a) lodge with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,

details of the name, address and field of practice of each medical practitioner who has examined or treated the worker in relation to the relevant injury and who is not mentioned in the documents accompanying the application.

- (4) If the party on whom an application is served is a worker and the application is made by an employer under section 60 or 62, the party must —
- (a) lodge with the party's reply; and
  - (b) serve on each party on whom a copy of the reply is served,

details of any forthcoming medical examinations of the worker for which an appointment has been made.

- (5) If the party proposes to adduce a document or other material or information but is unable to provide the document, material or



evidence in accordance with subrule (1), the reply must specify in detail —

- (a) the document, material or information that the party intends to adduce; and
  - (b) the reason why that document, material or information cannot be lodged with the reply.
- (6) The party must —
- (a) lodge copies of any document, material or information specified in a reply in accordance with subrule (5) with the Registrar; and
  - (b) serve copies of the document, material or information on each person on whom a copy of the reply is required to be served,

not less than 28 days, or any shorter period specified in the practice notes, before the hearing of the proceeding.

*[Rule 29 amended in Gazette 12 Jun 2015 p. 2045.]*

**30. Adducing late material in evidence**

- (1) In any proceeding, any document, material or information not lodged within the time limits prescribed in these rules must not be adduced in evidence in the proceeding by any party to the proceeding without first obtaining the leave of the arbitrator.
- (2) An arbitrator must not give leave unless —
  - (a) no other party is prejudiced by the relevant document, material or information being adduced in evidence; or
  - (b) in any event, the other parties consent to it being adduced; or
  - (c) in the opinion of the arbitrator it is required to be admitted in evidence in the proceeding in the interests of justice.

*[31. Deleted in Gazette 12 Jun 2015 p. 2045.]*

## **Part 5 — Proceedings before an arbitrator**

### **32. Party may discontinue proceeding**

- (1) A party may discontinue the whole or part of a proceeding commenced by the party.
- (2) The discontinuance takes effect when —
  - (a) a notice of discontinuance is lodged with the Registrar and a copy of the notice is served on the other parties to the proceeding; or
  - (ba) a notice of discontinuance signed by all parties to the proceedings is lodged with the Registrar; or
  - (b) an arbitrator makes a consent order effecting the discontinuance,whichever occurs first.

- (3) Subject to Part XV Division 2 of the Act an arbitrator may make an order as to costs in a proceeding that has been discontinued.

*[Rule 32 amended in Gazette 12 Jun 2015 p. 2045.]*

### **33. Adjournment of proceeding**

- (1) A proceeding may be adjourned by order of an arbitrator and not otherwise.
- (2) An arbitrator must not adjourn a proceeding unless it is demonstrated that one or more of the parties would be significantly prejudiced if the adjournment were not granted.
- (3) An arbitrator must not adjourn a proceeding indefinitely unless there are exceptional circumstances that justify such an adjournment and those circumstances are recorded in the formal record of the order.

### **34. Application for adjournment**

- (1) An application for adjournment 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.
- (2) Subject to rule 35, an order for adjournment will not be made if the application is made later than 5 working days before the day on which the proceeding sought to be adjourned is scheduled to be heard before an arbitrator.

**35. Late application for adjournment**

- (1) An order may be made in respect of an application for adjournment that is made later than the time specified in rule 34(2) if the arbitrator is satisfied that there are exceptional circumstances that justify the making of the order.
- (2) The arbitrator may consider the application at any time after it is made or on the day on which the proceeding sought to be adjourned is before the arbitrator for hearing.

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

- (1) If an application for an order to adjourn a proceeding is not determined before the day on which the proceeding sought to be adjourned is before an arbitrator, the parties and their representatives must attend on that day ready to proceed.
- (2) If a party is not ready to proceed on the day a proceeding comes before an arbitrator the party will be required to show —
  - (a) why the party is not ready to proceed on that day; and
  - (b) why the proceeding should not be dismissed or finally determined on that day.

**37. Interlocutory applications**

*[(1) deleted]*

- (2) Except as permitted under subrule (3), a party must not lodge an interlocutory application unless —
  - (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 legal practitioner or registered agent, to the effect that the consultation under paragraph (a) has taken place.
- (3) An arbitrator may permit an application to be lodged without the consultation referred to in subrule (2)(a) if the arbitrator is of the view that there are exceptional circumstances justifying the lodging of the application without the consultation.
- (4) A party who lodges an interlocutory application must include an explanation as to why the subject matter of the application was not addressed in the application for arbitration, the reply to the application or at a directions hearing in respect of the application, as the case may be.
- (5) Except as otherwise ordered by an arbitrator, a party served with a copy of an interlocutory application must no later than 2 working days before the time fixed for hearing that application lodge and serve either —
  - (a) a notice consenting to the application; or
  - (b) a notice opposing the application, and stating the grounds on which the application is opposed.
- (6) If a party fails to lodge and serve a notice required by subrule (5) the interlocutory application may be determined as if that party did not oppose any part of the application.

*[Rule 37 amended in Gazette 12 Jun 2015 p. 2046.]*

**38. Consent orders**

- (1) Where the parties, or some of the parties, to a proceeding in respect of a dispute —
  - (a) agree as to the terms of an order to be made in relation to, or determining, the dispute; and
  - (b) lodge with the Registrar a memorandum setting out the terms of the order and signed by each of the parties,an arbitrator may make that order.
- (2) The arbitrator may make the order by signing the memorandum lodged under subrule (1)(b).
- (3) Subrule (1) does not empower an arbitrator to make an order that the arbitrator would not otherwise have power to make under the Act.

**39. Proceedings to be held in private**

- (1) A proceeding must be conducted in private unless the arbitrator decides that the proceeding should be conducted in public.
- (2) An arbitrator may give directions as to the persons who may be present at a proceeding conducted in private.

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

With the exception of medical witnesses, an arbitrator must not confer with or interview a party or witness in relation to a proceeding except at a hearing in relation to the relevant dispute.

**41. Statement as to agreed facts and issues**

- (1) An arbitrator may order the parties to a proceeding to lodge a signed statement setting out the facts and issues on which the parties agree, and the facts and issues that are in dispute.

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- (2) 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.
- (3) The parties are bound by the statement and may not assert to the contrary, except with the leave of the arbitrator.

**42. Directions hearing**

Before the hearing of a proceeding for determination of a dispute, the Registrar may convene a directions hearing to be conducted by an arbitrator for the following purposes —

- (a) clearly defining the issues to be determined;
- (b) making appropriate directions for the speedy and fair conduct of the proceeding;
- (c) listing the dispute for hearing;
- (d) ensuring effective case management of the dispute.

**43. Notice of hearing**

The Registrar must give written notice of the time and place for the hearing of a proceeding for determination of a dispute by arbitration to —

- (a) each party to the proceeding; and
- (b) each other person entitled to notice of the hearing under the Act.

**44. Index and record of documents**

- (1) Unless the arbitrator expressly directs otherwise, each party must, at the start of a hearing of a proceeding for determination of a dispute by arbitration, give to the arbitrator and each other party to the proceeding an index of the documents that the party intends to adduce in evidence at the hearing.
- (2) An arbitrator at a hearing of a proceeding for determination of a dispute by arbitration must record the documents that are admitted in evidence.

## **Part 6 — Disclosure of documents and information**

### **45. Duty of disclosure**

For the purposes of this Part, a duty of disclosure applies to each document that —

- (a) is or has been in the possession, or under the control, of the party to a proceeding on whom a request is served under rule 46; and
- (b) is relevant to an issue in the proceeding; and
- (c) is not a document the party is excused from producing under section 206.

### **46. Disclosure without order**

- (1) A party to a proceeding (the ***requesting party***) may, by notice in writing served on another party to the proceeding, request the other party to serve on the requesting party a list of documents to which the duty of disclosure applies.
- (2) A party must not serve notice under subrule (1) until after the time for lodging a reply under rule 27(1) has expired.
- (3) A party served with a notice under subrule (1) must, within 14 days of the service, serve on the requesting party a list specifying —
  - (a) the documents to which the duty of disclosure applies and which are in the possession, or under the control, of the party on whom the notice is served; and
  - (b) the documents to which the duty of disclosure applies but which are not in the possession, or under the control, of the party on whom the notice is served (with a brief statement about the circumstances in which the documents left the party's possession or control); and
  - (c) the document the party is excused from producing under section 206.

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- (4) A party served with a notice under subrule (1) must, within 7 days after being so requested by the requesting party, serve on the requesting party a copy of any document mentioned in subrule (3)(a) or allow the requesting party to inspect the document.

**47. Orders relating to disclosure**

- (1) An arbitrator may order that —
  - (a) a party must comply with a request for a list of documents under rule 46(1) or a request for production and inspection under rule 46(4); and
  - (b) a party must lodge an affidavit as to —
    - (i) the documents that are in the possession or control of that person; or
    - (ii) the circumstances in which a specified document or class of documents that has been in the possession, or under the control, of the party ceased to exist or passed out of the possession or control of that party;and
  - (c) a party is partly or fully excused from the duty to produce a document.
- (2) An affidavit under subrule (1)(b)(i) must state that, to the best of the deponent's knowledge and belief, every document required to be disclosed under rule 46 has been disclosed.
- (3) An affidavit under subrule (1)(b)(i) must be sworn —
  - (a) if the party is a natural person, by the person; and
  - (b) if the party is a corporation, by an appropriately authorised officer of the corporation.

**48. Request for order to produce documents: section 193**

- (1) A party to a proceeding may, by lodging an interlocutory application and a proposed order with the Registrar, request an



arbitrator to issue an order under section 193 requiring a person to produce documents or material.

- (2) An order made pursuant to a request under subrule (1) must be served by the person making the request on the person required to comply with the order and the other parties to the proceeding not less than 7 days before the day specified in the order as the day on which the documents or material must be produced, or within such other time as an arbitrator may order.
- (3) A person is not required to comply with an order that is not served in accordance with subrule (2).

*[Rule 48 amended in Gazette 12 Jun 2015 p. 2046.]*

**49. Continuing obligation to disclose documents**

- (1) A party requested under rule 46 or ordered under rule 47 to disclose documents is under a continuing obligation until the end of the proceeding to disclose any document to which the duty of disclosure applies that is not already disclosed by that party.
- (2) The party must disclose the document as soon as is practicable after the party becomes aware of the document.

**50. Order under rule 47 or section 193**

- (1) An arbitrator must not exercise powers under rule 47 or section 193 unless the arbitrator is satisfied that the order is necessary for the fair, just, economical, informal and quick resolution of a dispute.
- (2) In exercising powers under rule 47 or section 193 the arbitrator may consider the following —
  - (a) whether the document, material or information sought is relevant to an issue in dispute;
  - (b) the relative importance of the issue to which the document, material or information relates;

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- (c) the likely time, cost and inconvenience involved in producing a document, material or information, taking into account the amount of the property, and the complexity of the corporate, trust or partnership interests (if any), involved in the proceeding;
- (d) the likely effect on the outcome of the proceeding of producing, or not producing, the document, material or information.

## **Part 7 — Representation**

### **51. Notice of representation**

- (1) If a party to a proceeding is represented by a legal practitioner or registered agent (a **representative**), the representative must —
  - (a) within 3 working days of receiving instructions to represent the party lodge with the Registrar a notice of representation; and
  - (b) serve a copy of the notice on each other party to the proceeding.
- (2) If a representative is to represent a party from the commencement of a proceeding, the notice of representation is to be taken to be lodged if the representative signs the first document lodged on behalf of the party in the proceeding and gives in that document the address of the representative as the party's address for service.
- (3) If the authority of a representative to act on behalf of a party is limited or restricted in any way, the representative must indicate the manner and extent of the limitation or restriction in the notice of representation.
- (4) If a notice of representation does not indicate that the authority of a representative is limited or restricted in any way, the Registrar is entitled to assume that the authority is not limited or restricted.
- (5) If a person ceases to be a representative of a party in a proceeding, the person must —
  - (a) within 3 working days of ceasing to represent the party, lodge with the Registrar a notice stating —
    - (i) that the person has ceased to represent the party; and
    - (ii) the party's address for service in the proceeding; and

- (b) serve a copy of the notice on each other party in the proceeding.

**52. Litigation guardian**

- (1) If a child is a party or potential party to a proceeding or proposed proceeding, the arbitrator may appoint a litigation guardian to act on the child's behalf for the purposes of the proceeding.
- (2) A litigation guardian appointed under subrule (1) must be an appropriately qualified person who is not under a legal disability.
- (3) A person appointed as a litigation guardian of a child must serve written notice of the appointment on each person to whom the person is directed by the arbitrator to serve the notice.
- (4) If a party to a proceeding or proposed proceeding is under a legal disability (other than because of being a child), the arbitrator may, on the arbitrator's own initiative, adjourn or defer the proceeding or proposed proceeding until a litigation guardian is appointed to act on the party's behalf, whether under the *Guardianship and Administration Act 1990* or otherwise.
- (5) A person appointed as a litigation guardian of a party or potential party —
  - (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 8 — Joinder of parties**

### **53. Arbitrator may give leave to join another party**

An arbitrator may, on the application of a party to a proceeding or on the arbitrator's own initiative, order that another person be joined as a party to a proceeding and following the joinder the arbitrator may make any further orders the arbitrator thinks fit.

### **54. Notice of joinder**

- (1) If, on an application under rule 53 by a party to a proceeding, an arbitrator orders that another person be joined as a party to the proceeding, the party that made the application must, within 7 days after the order is made, serve on the person being joined and, if that person is an employer but not a self-insurer, the employer's insurer —
  - (a) written notice advising the person of the joinder and of the time in which the person may lodge and serve a reply (14 days after service of the notice); and
  - (b) a copy of the application for arbitration and any reply to the application; and
  - (c) copies of any documents, material and information that were lodged with the application or reply.
- (2) If a person is joined as a party to a proceeding under rule 53 by an arbitrator on the arbitrator's own initiative, the Registrar must serve on the person the notice, documents, material and information referred to in subrule (1).
- (3) If a person referred to in subrule (2) is an employer but not a self-insurer, the notice, documents, material and information referred to in subrule (1) must be served on both the employer and, if known to the Registrar, the employer's insurer.

### **55. Reply by person joined**

- (1) A person who is joined as a party to a proceeding may, within 14 days of being served with notice under rule 54, lodge with

the Registrar and serve on the other parties to the proceeding a reply to the notice.

- (2) A person who is joined as a party to a proceeding and who wishes to object to the joinder must include in the reply under subrule (1) the reasons why the person should not properly be included as a party to the proceeding.
- (3) Rule 29 applies to a reply under this rule.

## **Part 9 — Witnesses**

### **56. Summons**

- (1) A summons issued under section 202 must be in the approved form.
- (2) If a summons is issued under section 202 on the request of a party to the proceeding, that party must serve the summons on 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 served by personal service in accordance with rule 18.
- (4) The person to whom the summons is directed is not required to comply with the summons unless —
  - (a) the summons is served on the person in accordance with this rule; and
  - (b) any witness allowance for the expenses of attendance prescribed by the regulations is paid or tendered to the person at the time of service of the summons or not later than a reasonable time before the time at which the person is required to attend.

### **57. Witness statements**

- (1) If a party proposes to adduce oral evidence from a witness, the party must lodge with the Registrar and serve on the other parties with the documents lodged and served by that party under rule 25(1), 29(1) or 30 a document containing —
  - (a) the name of the witness; and
  - (b) a detailed statement of the evidence to be given by the witness, signed by the witness.
- (2A) Except with the leave of an arbitrator, the evidence in chief of a witness from whom oral evidence is adduced is to be confined

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to the evidence set out in the document lodged and served under subrule (1) in relation to that witness.

- (2) Subject to subrule (3), a witness cannot appear in a proceeding to give evidence unless the party calling that witness has lodged and served with the documents lodged and served by that party under rule 25(1), 29(1) or 30 a statement that the arbitrator considers fully and properly specifies the following —
  - (a) the substance of the evidence that the party calling the witness believes on reasonable grounds the witness will give;
  - (b) the reliance the party intends to place on the evidence;
  - (c) if the evidence has not been included in a statement as required by subrule (1), the reason why it was not included;
  - (d) the time the evidence is expected to be so included.
- (3) An arbitrator may allow a witness to appear who would otherwise be prevented from appearing under section 183(5) if the arbitrator considers that the evidence of the witness would assist in the determination of the dispute in a manner that is fair, just, economical, informal and quick.
- (4) If a party proposes to give oral evidence, this rule applies to that party as though the party were the party's witness as well as being the party.
- (5) A certificate, report or statement referred to in rule 25(2)(a), (b) or (c) or 29(2)(a), (b) or (c) is to be taken to be a statement of a witness for the purposes of section 183(5) and this rule.
- (6) If a statement required to be lodged under subrule (1) or (2) makes reference to a document other than a medical report to which rule 59 applies, then the document must not be adduced in evidence unless a copy of that document is attached to the statement or is, in the opinion of the arbitrator, otherwise sufficiently identified.



*[Rule 57 amended in Gazette 12 Jun 2015 p. 2046.]*

**58. Medical evidence**

- (1) Except with the leave of an arbitrator, any medical evidence of a medical practitioner must be given in writing and a medical practitioner may not be called to give oral medical evidence at a hearing before an arbitrator.
- (2) An application for leave to call oral evidence from a medical practitioner must —
  - (a) be made not less than 14 days prior to the date set for the hearing; and
  - (b) state the grounds on which the leave is sought.
- (3) An arbitrator must not give leave to call oral medical evidence unless the arbitrator is satisfied that the giving of the evidence will assist in the determination of a dispute in a manner that is fair, just, economical, informal and quick.

**59. Medical reports**

- (1) Except with the leave of an arbitrator, in any proceeding —
  - (a) a medical report by a medical practitioner in a particular area of medical practice may not be lodged or admitted in evidence on behalf of a party to a 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 may not 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 one area of medical practice is to be taken to be a medical report in each of those areas of medical practice.

- (3) This rule does not affect the filing or admission in evidence of a medical report in a proceeding if the report was filed or admitted in the proceeding before the coming into operation of the *Worker's Compensation (DRD) Rules 2005*.
- (4) This rule does not affect the lodging or admission in evidence of a medical report required to be obtained because —
  - (a) a worker's medical practitioner has ceased treating the worker by reason of retirement, change in practice or similar reason, and the medical practitioner's practice has been taken over by another medical practitioner; or
  - (b) a worker attends a general medical practice and is seen by more than one medical practitioner in that same practice from time to time.

## **Part 10 — Costs**

**60. Term used: costs**

In this Part —

**costs** has the meaning given in section 261.

**61. Order as to costs**

- (1) A party to a dispute which is the subject of an application for arbitration may apply to an arbitrator for an order as to costs.
- (2) The application for an order as to costs may include costs of, or incurred in connection with, the application for conciliation that preceded the application for arbitration.
- (3) An application for an order as to costs must be made in writing and accompanied by —
  - (a) a statement of costs claimed; and
  - (b) copies of any vouchers, accounts and receipts relevant to the costs claimed.

**62. Application for assessment of costs**

- (1) A party to a dispute which is the subject of application for arbitration may apply to an arbitrator for the assessment of costs in respect of a matter.
- (2) An application for assessment of costs must be in writing and accompanied by copies of any vouchers, accounts and receipts relevant to the assessment of costs.

**63A. Submission on application for order as to costs or for assessment of costs**

- (1) Except as otherwise ordered by an arbitrator, a party served with a copy of an application under rule 61 or 62 must within 14 days of the service lodge and serve either —
  - (a) a notice consenting to the application; or

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- (b) a notice opposing the application, and stating the grounds on which the application is opposed.
- (2) If a party fails to lodge and serve a notice required by subrule (1) the application may be determined as if that party did not oppose any part of the application.

*[Rule 63A inserted in Gazette 12 Jun 2015 p. 2046-7.]*

**63. Expenses of approved medical specialist panel or approved specialised retraining assessment panel**

If an arbitrator orders an employer to pay expenses connected with a referral to an approved medical specialist panel under section 31D(5) or 158C(3) or clause 18C(2), or expenses connected with a referral to a specialised retraining assessment panel under section 158D(3), those expenses are to be the expenses certified in writing by the Registrar as the expenses connected with the referral.

## **Part 11 — Medical assessment panels and specialised retraining assessment panels**

### **Division 1 — Medical assessment panels**

#### **64. Form for requirement to attend**

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

#### **65. Time, date and place of meeting**

- (1) A medical assessment panel may determine the date, time and place at which the panel is to meet to determine an arbitration question.
- (2) A medical assessment panel must notify the Registrar of any determination under subrule (1).
- (3) In determining the date and notifying the Registrar, the medical assessment panel must allow sufficient time to enable the Registrar, the worker and the employer to comply with these rules.

#### **66. Notice of meeting**

If a medical assessment panel is to meet to consider an arbitration question —

- (a) the worker must be notified of the time, date and place of the meeting —
  - (i) in the form referred to in rule 64; or
  - (ii) by written notice given to the worker by the Registrar;
- and
- (b) the Registrar must give the employer of the worker written notice of the time, date and place of the meeting.

**67. Giving documents to medical assessment panel**

- (1) Except when complying with a requirement under section 145D(2), a worker, employer or insurer must not give any medical certificate, medical report or other document directly to a medical assessment panel in connection with an arbitration question.
- (2) When an arbitrator refers a question for determination by a medical assessment panel, the arbitrator must —
  - (a) give to the Registrar, with the referral, any medical certificates, medical reports or other documents that the arbitrator has that are relevant to the question; and
  - (b) give to the worker concerned and the employer of the worker a list of the documents given under paragraph (a).
- (3) When an arbitrator refers a question to a medical assessment panel under clause 18A(2ab), the arbitrator must give to the Registrar, with the referral, any prescribed evidence referred to in clause 18A(2aa)(c)(ii) that has been produced to the arbitrator.
- (4) Subject to any determination under rule 68(3), the Registrar must give the documents mentioned in subrules (2)(a) and (3) to the medical assessment panel.

**68. Objection to document being given to medical assessment panel**

- (1) The worker in respect of whom an arbitration question is to be determined, or the employer of the worker, may lodge with the Registrar an objection to the Registrar giving a document to a medical assessment panel.
- (2) The objection must be lodged not later than 7 days before the day on which the medical assessment panel is to meet to determine the arbitration question.

- (3) An arbitrator may determine whether a document in respect of which an objection has been filed under this rule may be given to a medical assessment panel.

## **Division 2 — Specialised retraining assessment panels**

### **69. Form for request to attend**

When a specialised retraining assessment panel, for the purposes of assisting it in determining an arbitration question, requests a worker, employer, insurer, medical practitioner or approved vocational rehabilitation provider to attend before it, that person must be given notice of the requirement in the approved form.

### **70. Time, date and place of meeting**

- (1) A specialised retraining assessment panel may determine the date, time and place at which the panel is to meet to determine an arbitration question.
- (2) A specialised retraining assessment panel must notify the Registrar of any determination under rule 65(1).
- (3) In determining the date and notifying the Registrar, the specialised retraining assessment panel must allow sufficient time to enable the Registrar, the worker and the employer to comply with these rules.

### **71. Notification of meeting**

- (1) If a question as to whether a worker satisfies retraining criteria is referred to a specialised retraining assessment panel, the worker, employer, insurer, medical practitioner and approved vocational rehabilitation provider concerned must be notified of the time, date and place of the meeting.
- (2) The notice must be —
- (a) in the form referred to in rule 69; or
  - (b) given in writing by the Registrar.

**72. Giving documents to specialised retraining assessment panel**

- (1) Except when complying with a requirement under section 146U(2), a worker, employer, insurer, medical practitioner or approved vocational rehabilitation provider must not give any document directly to a specialised retraining assessment panel.
- (2) An arbitrator who refers a question to a specialised retraining assessment panel must —
  - (a) give to the Registrar with the referral any documents that the arbitrator has that are relevant to the question; and
  - (b) give to the worker concerned and the employer of the worker a list of the documents given to the panel under rule 67(2)(a).
- (3) Subject to any determination under rule 73(3), the Registrar must give the documents mentioned in rule 67(2)(a) and (3) to the specialised retraining assessment panel.

**73. Objection to document being given to specialised retraining assessment panel**

- (1) The worker in respect of whom an arbitration question is to be determined or the employer of the worker may lodge with the Registrar an objection to the Registrar giving a document to a specialised retraining assessment panel.
- (2) The objection must be lodged not later than 7 days before the day on which the specialised retraining assessment panel is to meet to determine the arbitration question.
- (3) An arbitrator may determine whether a document in respect of which an objection has been filed under this rule may be given to a specialised retraining assessment panel.



## **Part 12 — Miscellaneous**

### **74. 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.

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

- (1) The Arbitration Service is to have a seal or as many seals as the Registrar considers appropriate.
- (2) The seal must be in a form or forms 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 be presumed 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 or registered by the Registrar;  
and
- (b) all notices given, or decisions made, by an arbitrator;  
and
- (c) any other documents that are required to be sealed under these rules.

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**77.        Approved forms**

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

**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 the amendment to be necessary for the avoidance of injustice.
- (2) An amendment may be made at any stage of the proceeding and on such terms as the arbitrator thinks fit.

**79.        Application of these rules to pending arbitration proceedings**

- (1) In this rule —  
***DRD Rules*** has the meaning given in Schedule 8 clause 1 of the Act;  
***pending arbitration proceeding*** has the meaning given in Schedule 8 clause 1 of the Act.
- (2) The application of these rules extends to a pending arbitration proceeding that, under Schedule 8 clause 2(1) of the Act, is to be dealt with and determined under Part XI Division 4 of the Act.
- (3) A step taken under the DRD Rules in a pending arbitration proceeding before the coming into operation of these rules has effect as if it were taken in accordance with these rules.

### **Notes**

- <sup>1</sup> This is a compilation of the *Workers' Compensation and Injury Management Arbitration Rules 2011* and includes the amendments made by the other written laws referred to in the following table.

### **Compilation table**

| <b>Citation</b>   | <b>Gazettal</b>           | <b>Commencement</b>   |
|---|---------------------------|---|
| <i>Workers' Compensation and Injury Management Arbitration Rules 2011</i>           | 9 Nov 2011<br>p. 4689-740 | r. 1 and 2: 9 Nov 2011<br>(see r. 2(a));<br>Rules other than r. 1 and 2:<br>1 Dec 2011 (see r. 2(b) and<br><i>Gazette</i> 8 Nov 2011 p. 4673) |
| <i>Workers' Compensation and Injury Management Arbitration Amendment Rules 2015</i> | 12 Jun 2015<br>p. 2044-7  | r. 1 and 2: 12 Jun 2015<br>(see r. 2(a));<br>Rules other than r. 1 and 2:<br>1 Jul 2015 (see r. 2(b)(ii))                                     |

**Defined terms**

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**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> |
|--------------------------------------|---------------------|
| application for arbitration .....    | 3                   |
| approved fax number .....            | 10(1)               |
| approved form.....                   | 3                   |
| arbitration question .....           | 3                   |
| costs .....                          | 60                  |
| document.....                        | 7                   |
| DRD Rules .....                      | 79(1)               |
| interlocutory application .....      | 37(1)               |
| pending arbitration proceeding ..... | 79(1)               |
| proceeding.....                      | 3                   |
| representative .....                 | 51(1)               |
| requesting party.....                | 46(1)               |
| sealed copy.....                     | 15(1)               |
| section .....                        | 3                   |
| serve.....                           | 3                   |
| working day .....                    | 3                   |