



IN THE DISPUTE RESOLUTION DIRECTORATE
OF WESTERN AUSTRALIA

PRACTICE DIRECTION

The DRD has been resolved to implement a pilot program in order to test the efficacy of an expedited “fast-track” dispute resolution option.

The object of the fast-track program is to enable a matter to be listed for an expedited conciliation and directions conference (an “initial conference”) (with a view to settlement and/or narrowing the issues) before the parties are obliged to file all of the documents required by rules 58 and 61. It is intended that matters in the program will be fast-tracked as much as practicable.

The pilot programme will commence on 1 September 2009.

THE PROCEDURE

The procedure for the pilot program is as follows:

- (1) An applicant in Part XI proceedings may by letter of request (in the form attached) request the Director to include the application in the fast-track pilot program.
- (2) For the purposes of complying with rule 58, it will only be necessary for the applicant to include such medical evidence as is available at that time as well as the worker’s witness statement (if the applicant is a worker). For the purpose of the pilot program, a document, or evidence, is to be regarded as “available at that time” if it is in the possession or under the control of the relevant party at that time.
- (3) The applicant must still comply with s58(3), but this may be done by stipulating in the appropriate place in the Application Form the unavailable evidence on which he, she or it intends to rely which is not available at the time and, if practicable, by stating in relation to each item the date on which it is expected that the evidence will be available.

- (4) The applicant must agree in the letter of request that if the matter is included in the pilot program he, she or it will not unreasonably oppose the making of such of the standard directions (referred to at (13) below) as may be required from time to time.
- (5) The Director shall have an unfettered discretion to refuse a request for inclusion in the pilot program or to limit the number of matters which are included within it. Without limiting the discretion, the Director will have regard to whether (amongst other matters):
 - (a) the parties have already attempted to negotiate a settlement of all or part of the dispute;
 - (b) the issues in the matter are limited;
 - (c) there is evidence of the readiness of one or both parties to conduct the proceedings on an expedited and/or co-operative basis;
 - (d) the matter is unusually urgent and not suitable for a Part XII application.
- (6) Upon an application being approved for inclusion in the pilot program, the Director will allocate the matter to an arbitrator, immediately fix an appointment for the initial conference and provide notice of the same to the applicant. The initial conference will be scheduled for a date between 10 and 14 days after the application is sealed. It will be incumbent on the applicant to serve the application, a copy of the letter of request and the notice of initial conference as soon as practicable but in any event within 4 calendar days (maximum) of the documents being sealed. (It is envisaged that the applicant will have made arrangements for expeditious collection and service of the documents and will usually be able to do so on the same day as they are sealed).
- (7) The respondent will not be required to file a reply and book of documents until such date (after the initial conference) as the arbitrator directs.
- (8) The notice of appointment of the initial conference will include directions made by the Director to give effect to the interim (ie, temporary) waiver of the full requirements of rules 58, 59 and 61, namely paragraphs (2) and (7) above. (These directions are attached to this Practice Direction).

- (9) At the initial conference (and any subsequent conference to which the matter is adjourned) the arbitrator will:
- (a) Use best endeavours to conciliate the matter;
 - (b) Ascertain the issues in the application and record the same in a certificate of outcome.
 - (c) Make such directions in relation to the issues, the filing and service of the reply, a response (if any) and further proposed evidence as are necessary in order to expeditiously address the issues.
- (10) If the arbitrator's directions are not strictly complied with and in any event if satisfactory progress is not demonstrated within 5 weeks of the initial conference, then (unless there are exceptional circumstances) the matter will be removed from the pilot program and directions will be made by the arbitrator in accordance with paragraph (iv) of the standard directions. "Satisfactory progress" means that it appears to the arbitrator that the matter may be settled in the immediate future and/or that the issues and evidentiary requirements of the matter have been so substantially narrowed that there is a realistic prospect of the arbitration hearing taking place within a period of a further 8 weeks.
- (11) A matter may be removed from the pilot program on the application of a party or of the arbitrator's own motion.
- (12) All of the requirements of the DRD Rules as are in force from time to time are applicable and available, save to the extent that they are waived or modified by directions made by the Director or an arbitrator.
- (13) The standard directions are:
- (i) The respondent shall file its reply and book of documents pursuant to rules 59 and 61 within 7 days of the initial conference.
 - (ii) The initial conference shall be adjourned to a date to be fixed by the arbitrator on 24 hours notice to the parties, but not more than 7 days after the filing of the respondent's reply and book of documents.
 - (iii) The documents to be contained within the respondent's book of documents may be limited to such documents as the respondent intends to rely upon and which are available at that time. The respondent must stipulate in its reply the evidence on which he, she or it intends to rely and which is not available

at that time and, if practicable, state in relation to each item, the date by which it is expected the evidence will be available.

(iv) In the event that the matter is removed from the pilot program for any reason, then the following directions shall be made:

(a) The applicant shall file and serve any further evidence or documents falling within rules 58, 62, 64 or 89 within 14 days of the making of the order which effects the removal of the matter from the pilot program.

(b) The respondent shall file and serve any further evidence or documents falling within rules 61 or 89 within 14 days of the applicant complying with order (a) above.

(c) Thereafter, the matter shall be listed for a conciliation and arbitration hearing as soon as practicable.

Dated ²⁵ June 2009

[Date]

The Director
Dispute Resolution Directorate
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

Dear Director

APPLICATION FOR INCLUSION IN THE FAST-TRACK PILOT PROGRAM

A Part XI application in relation to the abovementioned matter is lodged with this letter.

The applicant applies for inclusion in the fast-track pilot program. The matter is suitable for inclusion in the program for the following reasons:

Briefly set out the reasons why the matter is suitable for fast-track determination. For example:

- The parties have already negotiated and narrowed the issues to #.
- The likely issues are limited, namely #.
- The matter is unusually urgent and not suitable for a Part XII application for the following reasons: #

The applicant agrees to the interim orders referred below (modified as necessary).

The applicant agrees that he/she/it will not unreasonably oppose the making of the standard directions referred to below.

The applicant will serve the sealed copy of the application, a copy of this letter and the notice of initial conference as soon as practicable, but within 4 calendar days of the application being sealed.

Interim Orders

- (1) For the purposes of complying with rule 58, it is only necessary for the applicant to file such medical evidence as is available at this time together with the applicant's witness statement (a document, or evidence, is to be regarded as "available at this time" if it is in the possession or under the control of the applicant).
- (2) The respondent is not required to file a reply and book of documents until such date (after the initial conference) as the arbitrator directs.

The Standard Directions

- (1) The respondent shall file its reply and book of documents pursuant to rules 59 and 61 within 7 days of the initial conference.
- (2) The initial conference shall be adjourned to a date to be fixed by the arbitrator on 24 hours notice to the parties, but not more than 7 days after the filing of the respondent's reply and book of documents.
- (3) The documents to be contained within the respondent's book of documents may be limited to such documents as the respondent intends to rely upon and which are available at that time. The respondent must stipulate in its reply the unavailable evidence on which he, she or it intends to rely and if practicable state, in relation to each item, the date by which it is expected the evidence will be available for filing.

- (4) In the event that the matter is removed from the pilot program for any reason, then the following directions shall be made:
- (a) The applicant shall file and serve any further evidence or documents falling within rules 58, 62, 64 or 89 within 14 days of the making of the order which effects the removal of the matter from the pilot program.
 - (b) The respondent shall file and serve any further evidence or documents falling within rules 61 or 89 within 14 days of the applicant complying with order (a) above.
 - (c) Thereafter, the matter shall be listed for a conciliation and arbitration hearing as soon as practicable.

Yours faithfully