



## Magistrates Court

## Industrial Court Practice Direction 1/2021

### Proceedings under the *Workers Compensation Act 1951*

1. This practice direction sets out the procedures that apply to proceedings under the *Workers Compensation Act 1951* (**the Act**). It is to be read in conjunction with the Act and Chapter 3 Part 3.13 of the Court Procedure Rules (**the Rules**).
2. An applicant is expected to have preparation of their case well advanced before filing their application for arbitration. Where possible, this includes obtaining any medical evidence upon which they intend to rely.
3. The applicant is to serve this practice direction on every other party with the application for arbitration.
4. The respondent is strongly encouraged to provide an answer to the application prior to the informal settlement conference (**ISC**). Rule 3913 provides that the respondent may file an answer to an application not later than 28 days after the day the respondent is served with the application for arbitration. An answer to an application for arbitration must comply with Rule 2914. The purpose of the answer is to clearly set out the issues in dispute and provides the court with contact details for the respondent.

#### Informal settlement conference

5. Parties must conduct an ISC prior to the dispute resolution conference (**DRC**).
6. Parties must inform the registrar of the date of the ISC by email to [mcregistrar@courts.act.gov.au](mailto:mcregistrar@courts.act.gov.au).
7. Not later than two weeks before the ISC the applicant is to serve all evidence in support of their claim.

8. If an ISC is not held before the DRC, the court may vacate the DRC listing and list the matter for non-compliance.
9. Parties must notify the court and apply for registration of the terms of settlement if the matter is resolved at the ISC or prior to the DRC. The court will proceed to vacate the DRC listing.

#### **Listing for dispute resolution conference**

10. In accordance with Rule 3947, a DRC will be listed not later than 3 months after the day an answer to an application has been filed. Alternatively, if 3 months has passed since the day the application was filed and no action has been taken by either party, not later than 1 month after the 3 months has passed.

#### **Information to be provided before the DRC**

11. Rule 3948 requires each party to give to the court and each other the following documents no later than 5 days before the DRC:
  - a. a statement of issues
  - b. a summary of the evidence on which the party intends to rely at the arbitration
  - c. if the party intends to rely on expert evidence at the arbitration but the party has not yet obtained that evidence-details of what arrangements have been made by the party to obtain the evidence.
12. In accordance with the purpose of the DRC as provided in the Rule 3943, the documents referred to in paragraph 11 above must clearly and comprehensively explain the issues in dispute in the proceedings such as:
  - a. state or territory of connection issues (if any)
  - b. whether liability is disputed
  - c. the extent to which the alleged injury is disputed
  - d. quantum
  - e. any narrowing of the issues in dispute following the ISC.
13. If a party fails to comply with Rule 3948 or provides insufficient information to assist with the effective conduct of the DRC in line with the purpose provided in Rule 3943, the court may list the matter for directions for non-compliance.

#### **Dispute Resolution Conference**

14. The purpose of the DRC is to:

- a. settle any issue in dispute
  - b. settle the amount of compensation payable or the basis on which compensation is payable and
  - c. if settlement of the claim is not reached, narrow the issues in dispute and agree on the future progress of the application.
15. Rule 3946 provides the requirement for certain persons to attend the DRC, unless otherwise ordered by the court. Parties are required to seek leave of the court if any of the persons are unable to attend. Prior to seeking leave, the party seeking leave is required to obtain the views of the other party.
16. Pursuant to Rule 3943, all parties attending the DRC must make a genuine effort to settle the claim.
17. Each DRC will initially be listed for 1 ½ hours. If a longer timeframe is required, parties are to jointly approach the court not later than 14 days before the DRC listing.
18. If the matter settles at the DRC, agreement must be recorded in writing (see Rule 3948B). A template terms of settlement is at **Attachment A**.
19. If the matter does not settle at the DRC the court will either direct parties to attend a further DRC or set the matter down for arbitration and will make further directions if required. Usual directions are at **Attachment B**.

#### **Application to dispense with Dispute Resolution Conference**

20. Given the requirement in the Rule 3945(1) that each application must be listed for DRC, parties are to expect that orders dispensing with a DRC will be made only in exceptional circumstances.
21. An application to dispense with a DRC must be made by way of application in proceeding with an affidavit addressing the issues in Rule 3945(3).

#### **Commencement**

22. This practice direction commences on 14 December 2021.

By direction of the Chief Magistrate and Magistrates



Helen Banks  
Registrar  
14 December 2021

WORKERS' COMPENSATION PROCEEDINGS – TERMS OF SETTLEMENT

WC \_\_\_\_\_ of \_\_\_\_\_

Applicant

v

Respondent

\_\_\_\_\_ for the Applicant (worker/employer)

\_\_\_\_\_ for the Respondent (employer/worker)

**BY CONSENT**

**Workers' compensation proceedings**

- ☐ The worker commutes and redeems his/her rights under the *Workers' Compensation Act 1951 (ACT)* for a payment of \_\_\_\_\_, clear of any compensation already paid.
- ☐ Form 3.66 under the *Court Procedures Rules 2006* is to be signed and registered by the worker.
- ☐ The worker shall execute a common law release.
- ☐ The commutation, redemption and common law release relate(s) to all injuries suffered by the worker during the course of his/her employment with the employer
- ☐ The workers has resigned or ceased employment with the employer on \_\_\_\_\_

ORDERS be made that:

- ☐ The employer pay the worker's costs to be agreed or assessed on the basis of  $\frac{2}{3}$  of costs that may be awarded under Part 2.17 of the *Court Procedures Rules 2006*, with all reasonable disbursements allowed in full.
- ☐ The employer pay the worker's costs agreed in the sum of \$ \_\_\_\_\_.
- ☐ There be no order as to costs.

**Common law proceedings**

- ☐ Supreme Court proceeding No SC \_\_\_\_\_ of \_\_\_\_\_ are to be settled by entry of a consent judgment for the worker/plaintiff against the employer/defendant for \$ \_\_\_\_\_.
- ☐ The amount of the settlement in those proceedings is:
- ☐ Additional to the amount payable in respect of the worker's redemption under the *Workers' Compensation Act 1951*.
- ☐ Clear of any compensation paid.
- ☐ The costs of the Supreme Court proceedings are to be paid by the employer/defendant.
- ☐ There is to be no order for costs in these proceedings.

**Interest**

- ☐ No interest is to be paid in relation to the total amount to be paid to the worker pursuant to the foregoing settlement, provided 90 per cent is paid to the worker within 28 days of:
- ☐ Today's date
- ☐ The date of registration of Form 3.66    **OR**
- ☐ The date of entry of the consent judgment in the Supreme Court

Whichever is the later, **AND** 10 per cent is paid to Medicare Australia within 28 days of today's date; otherwise, interest is to run on all amounts at the rate applicable from time to time at the rate applicable to judgments under *Court Procedures Rules 2006* rule 1620.

- ☐ No interest is to be paid in relation to costs, provided the costs are paid within 28 days of any agreement or assessment; otherwise, interest is to run on all amounts at the rate applicable to judgments under *Court Procedures Rules 2006* rule 1620.

**Other terms**

- ☐ The worker hereby resigns his/her employment with the employer.
- ☐ The worker agrees that he/she resigned her employment with the employer on \_\_\_\_\_ (date).

**CERTIFICATION:** I, \_\_\_\_\_, solicitor/counsel for the worker, confirm that I have provided independent legal advice about the above agreement and, based on my experience and knowledge of the claim and issues, I am of opinion that the agreed amount of compensation is not manifestly inadequate.

\_\_\_\_\_  
Counsel for the Applicant

\_\_\_\_\_  
Counsel for the Respondent

DATED:

**Attachment B – Usual Directions**

<b>Event</b>	<b>Timeframe</b>	<b>CP Rule</b>
Application for arbitration filed <ul style="list-style-type: none"><li>• With copy of PD</li></ul>		
Application for arbitration served <ul style="list-style-type: none"><li>• Affidavit of service to be filed</li></ul>	Not later than 14 days of filing	3911
Employer respondent serves application on insurer	Not later than 7 days of service of application	3912
Respondent's answer filed and served on applicant and other respondents	Not later than 28 days after service	3913(2)
Informal settlement conference held	Before dispute resolution conference	PD
Parties documents filed and served	No later than 5 days before DRC	3948
Each party must file and serve medical reports	Not later than 28 days before the arbitration	3928
Notice requiring doctor for cross examination	Not later than 14 days after the notice is served	3932
Arbitration		