

Agents able to appear once again in WA Wardens Court

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A long running debate over who can appear on behalf of parties in the WA Wardens Court was quietly resolved recently with Regulation 169 being deleted and new regulations inserted that now allow agents to once again appear in the Wardens Court.

Agents have been representing parties in Wardens Court matters for many years. Most recently, agents were appearing before the Warden under a Practice Direction issued by Chief Magistrate in 2014 that granted leave for agents to appear after they filed a notice of appointment with the Warden.

This direction was rescinded in 2017 after a local lawyer questioned the practice and pointed out that under Regulation 169 agents were only able to appear after seeking special leave from the Warden due to exceptional circumstances. Since 2017, agents have been required to seek special leave from the Warden to represent parties, and this leave was not routinely granted. The effect of this was that parties seeking representation were required to engage a lawyer to appear on their behalf.

This issue was resolved on 17 July 2020 when Regulation 169 was deleted, removing the requirement for agents to seek special leave to represent parties in the Wardens Court. New Regulations 168A, 168B and 168C were inserted which detail the circumstances surrounding representation for agents, lawyers and parties.

What has changed?

Regulation 168A sets out the options for representation for individuals and body corporates with matters for the Wardens Court. Under regulation 168A agents can provide representation in mention hearings without the need to seek the leave of the Warden. All other hearings will still require agents to seek the leave of the Warden for representation. Both lawyers and agents are subject to Regulation 168B, which details the requirements for notice of representation. The Department of Mines, Industry Regulation and Safety have now published the new [form](#) for notice of representation.

Regulation 168B applies to lawyers and agents representing parties in matters before the Warden and requires that the party must lodge and serve notice of their representation as soon as is practicable before the first hearing at which the lawyer or agent will represent the party. This requirement also applies to changes in representation and in cases where the party is no longer represented by a lawyer or agent.

Benefits of Regulation 168A

The new Regulation 168A provides mining and exploration companies with additional representation options to navigate the Wardens Court in a more efficient manner. With the number of complaints before the Warden seeing a sharp increase since the COVID-19 pandemic began and the associated increased pressure on conserving cashflow, the ability to have an agent attend mention hearings rather than engaging a lawyer will be welcome for some, particularly junior miners and explorers who have been harder hit by the economic recession.

Removing the requirement to seek the leave of the Warden and enshrining the new requirements in the Regulations should also see the end of the need for Practice Directions to determine the circumstances around representation. This provides certainty to parties, lawyers and agents and removes an unnecessary administrative burden.

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