

1995—No. 560

DUST DISEASES TRIBUNAL ACT 1989—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 4 September 1995, and has effect on and from 8 September 1995.
2. The Dust Diseases Tribunal Rules are amended by inserting the following rule after rule 4 (repealed):

Provisional damages

5. (1) This rule applies to proceedings which the Tribunal is satisfied are proceedings to which section 11A of the Act applies.

(2) In this rule:

“**further damages**” means damages as referred to in section 11A (2) (b) of the Act;

“**provisional damages**” means damages as referred to in section 11A (2) (a) of the Act.

(3) The Tribunal may, subject to this rule, award provisional damages in proceedings, on such term as the Tribunal thinks just, and give judgment accordingly, if the plaintiff has pleaded a claim for provisional damages in the proceedings.

(4) An order for an award of provisional damages must specify the dust-related condition in respect of which an award of further damages may be made.

(5) An order for an award of provisional damages may be made in respect of more than one dust-related condition.

(6) For the purposes of subrule (3), a plaintiff has not pleaded a claim for provisional damages unless the statement of claim in the proceedings specifies the dust-related condition in respect of which the plaintiff claims provisional damages and the other dust-related condition in respect of which the plaintiff seeks an order that further damages may be claimed.

(7) Where in proceedings the plaintiff has pleaded a claim for provisional damages and a defendant makes an offer of compromise, the offer may be expressed to be an offer to agree to the making of an award of provisional damages and an offer as to the amount of those damages, and where the plaintiff accepts an offer so expressed the plaintiff must as soon as practicable apply to the Tribunal for an order in accordance with subrule (4).

(8) Where the Tribunal has made an award of provisional damages in proceedings and the plaintiff seeks to claim further damages, the following provisions apply:

- (a) the application must be made by notice of motion served, at least 7 days before the day on which it is returnable, on each defendant in respect of the claim, and if that defendant is to the plaintiff's knowledge insured in respect of the claim, on the insurer;
- (b) on the hearing of the application the Tribunal must give such directions as may be appropriate for the future conduct of the proceedings, including, but not limited to, the joinder of parties, the disclosure of medical and other expert reports, and the place and date of the hearing of the application for further damages;
- (c) only one application for further damages may be made in respect of each dust-related condition specified in the order for the award of provisional damages; and
- (d) where the Tribunal awards further damages and awards interest in respect of those damages or any part of them, that interest shall, unless the Tribunal otherwise orders, relate only to the period, or part of the period, between the date of the plaintiff's notice given under paragraph (a) and the date of the award.

EXPLANATORY NOTE

The purpose of the rule is to provide a procedure for the awarding of provisional damages and claims for further damages as allowed, "in accordance with the rules", by the insertion of section 11A into the Dust Diseases Tribunal Act 1989.

E. J. O'GRADY,
Secretary to the Rule Committee.
