



New South Wales

## DUST DISEASES TRIBUNAL ACT 1989—RULE

1. This rule is made by the Rule Committee on 9 December 1996, and has effect on and from 13 December 1996.

2. The Dust Diseases Tribunal Rules are amended by inserting the following rule after rule 6:

### **Discovery and inspection of documents after 1 January 1997**

7. (1) Rule 6 does not apply to proceedings before the Tribunal commenced on or after 1 January 1997.

(2) Part 23 of the Supreme Court Rules 1970 applies, subject to the adaptations specified in subrule (3), to proceedings before the Tribunal commenced on or after 1 January 1997.

(3) The adaptations mentioned in subrule (2) are:

(a) Part 23 rule 3 (5), (6)

Omit “were later than 6 months prior to the commencement of the proceedings” where occurring, insert instead “have been”;

(b) After Part 23 rule 6 insert:

### **Discovery in other proceedings**

7. (1) The Tribunal may, on the application of a party or of its own motion, direct that party B may give discovery in compliance with an order made under rule 3 (1) by serving on party A any list, affidavit, certificate and notice served by party B in compliance with an order for discovery made in other proceedings.

(2) A direction under subrule (1) may be given in addition to any other order made under rule 3 (1).

### **Standard list of documents**

8. (1) If party B:

- (a) has filed with the Tribunal a standard list of documents, affidavit, certificate and undertaking under this rule; and
- (b) in his appearance or, if no appearance is filed, in his defence elects to rely on the standard list of documents as compliance with any order for discovery made under rule 3 (1) against him in the proceedings,

then, if such an order for discovery is made and the Tribunal does not otherwise direct, the standard list of documents, affidavit and certificate shall be party B's list of documents, affidavit and certificate in the proceedings for the purposes of rule 3 (5).

(2) Where subrule (1) takes effect in respect of an order for discovery, the Tribunal may order that it cease to have effect and that party B comply with the order for discovery as though no standard list of documents had been filed.

(3) A standard list of documents filed under subrule (1) must be a list, complying with rule 3 (6), of all the documents (other than excluded documents) which might reasonably be specified in an order for discovery made against party B in proceedings in the Tribunal and which:

- (a) are in the possession, custody or power of party B; or
- (b) are not, but have been, in the possession, custody or power of party B.

(4) An affidavit filed under subrule (1) must be an affidavit as referred to in rule 3 (5) (b).

(5) A certificate filed under subrule (1) must be a certificate as referred to in rule 3 (5) (c).

(6) An undertaking filed under subrule (1) must be party B's undertaking that:

- (a) party B waives any objection to the use of the standard list and of copies of any of the documents in the standard list, in proceedings in the Tribunal against party B, on the ground that the standard list or any of the documents has been the subject of an order for discovery in other proceedings; and
- (b) if party B becomes aware:
  - (i) that any document which should, under subrule (3), be included in part 1 of the standard list, but which is not so included, is within, or has come into, party B's possession, custody or power; or
  - (ii) that any document included in part 1 of the standard list which was claimed to be a privileged document was not, or has ceased to be, a privileged document,

party B will as soon as practicable accordingly amend the standard list under subrule (7).

(7) Party B may at any time amend a standard list of documents filed by him, but must as soon as practicable give notice of the amendment to party A in any proceedings current before the Tribunal in which the standard list is party B's list of documents.

(8) Party B may at any time withdraw a standard list of documents filed by him, but where the standard list has become party B's list of documents in any proceedings it shall remain that list of documents despite the withdrawal.

(9) Party B must not, by filing a standard list of documents or by relying on the standard list in any proceedings, be taken to admit that any document listed, which came into existence after the last date of the occurrences sued on or particularised in the proceedings, is relevant to the proceedings.

(10) The Tribunal shall keep possession of, and maintain a register of, all standard lists of documents filed with it, but shall not make any such list available for search by any person other than the party who filed it.

#### EXPLANATORY NOTE

The purpose of the amendment is to adopt with modifications the Supreme Court Rules as to discovery and inspection of documents, to enable discovery given in one proceedings to be used in others, and to enable a party to file a standard list of documents which will be a compliance with any order for discovery in future proceedings in the Tribunal.

E. J. O'Grady.

Secretary to the Rule Committee.