



New South Wales

DUST DISEASES TRIBUNAL ACT 1989—RULE

1. This rule is made by the Rule Committee on 8 December 1998, and has effect on and from 18 December 1998.

2. The Dust Diseases Tribunal Rules are amended by inserting the following rules after rule 7:

Limitation of section 25A (Material already obtained)

8. Section 25A (1) of the Act does not apply to a standard list of documents as referred to in rule 7 so as to require the leave of the Tribunal or the consent of any person for the operation of any provision of that rule in respect of the standard list.

General issues already determined

9. (1) A party who intends to rely in any proceedings on the determination in other proceedings of an issue of a general nature, as referred to in section 25B (1) of the Act, must within a reasonable time file and serve on all other parties notice of that intention, including full particulars of the precise issue alleged to have been determined and as to when, where and by whom the issue is alleged to have been determined.

(2) Subrule (1) does not prevent the Tribunal from determining on its own motion that an issue is an issue to which section 25B (1) of the Act applies.

Particulars where expedited hearing sought

10. Unless the Tribunal otherwise orders, a party applying for an expedited hearing must, at the time the application is made or at such other time as the Tribunal may order, file and serve on all other parties 3 notice specifying the grounds on which the application is made and, where the application is made on medical grounds, a medical report or reports substantiating those grounds.

Proceedings against more than one alleged tortfeasor

11. (1) Unless the Tribunal otherwise orders, a plaintiff who settles a claim with one or more but not all the alleged tortfeasors must file the terms of settlement and particulars of amounts paid under the settlement:

- (a) where proceedings on the claim against another or others of the alleged tortfeasors are pending, as soon as practicable, or
- (b) otherwise, on commencement of any proceedings on the claim against another or others of the alleged tortfeasors.

(2) Unless the Tribunal otherwise orders, the Tribunal or a member, registrar or other officer of the Tribunal may disclose any terms and particulars filed under subrule (1) to another party to the proceedings, whether or not the terms contain non-disclosure requirements.

Application of section 151AC of the Workers Compensation Act 1987

12. The Tribunal may if it thinks fit order that all or any of the provisions of section 151AC of the *Workers Compensation Act 1987* do not apply in or in relation to a particular case or in relation to a particular insurer:

- (a) on its own motion, or
- (b) on application by a party or by an insurer who is not a party.

Arbitration for insurance purposes

13. (1) In this rule:

“arbitrator” means arbitrator of disputes appointed under this rule:

"dispute" means dispute as to the liability of insurers as referred to in section 151AC of the *Workers Compensation Act 1987*.

(2) The registrar is appointed as an arbitrator.

(3) The President may appoint as an arbitrator any person approved by the President.

(4) The Tribunal or the registrar may, if the Tribunal or registrar thinks fit, and whether or not any application is made for the order, by order refer a dispute to an arbitrator named in the order, and may, but need not, in the order specify a place where and a day on which the arbitration of the dispute is to take place.

(5) If no place or day is specified in an order made under subrule (4), the registrar may by direction specify such a place or day.

(6) For the purposes of section 20 (1) of the Act, an arbitration under section 38 of the Act is a proceeding before the Tribunal, and a subpoena to give evidence issued in respect of an arbitration must be made returnable before the arbitrator.

(7) In an order made under subrule (4) or a subsequent order:

- (a) the Tribunal or registrar may specify the insurers or other persons who are or were parties to the original proceedings before the Tribunal and who are to be parties to the arbitration, and
- (b) the Tribunal may join as parties to the arbitration insurers or other persons who were not parties to the original proceedings before the Tribunal.

(8) An arbitrator must, if not prepared to hear and determine a dispute referred to the arbitrator, so inform the Tribunal or registrar as soon as practicable, specifying the arbitrator's reasons.

(9) If an arbitrator declines or fails to hear and determine a dispute, the Tribunal or registrar must revoke the order referring the dispute to the arbitrator, and may make another order referring the dispute to an arbitrator.

(10) An arbitrator may from time to time adjourn the arbitration of a dispute which the arbitrator has commenced to hear.

(11) Subject to subrule (10), an arbitrator must, on the day (if any) specified under subrule (4) or (5), or to which the arbitration has been adjourned under subrule (10), and in any case within a reasonable time, hear, or continue to hear, and determine the dispute, whether or not in the absence of any party to the dispute.

(12) An arbitrator must within a reasonable time after hearing and determining a dispute reduce the arbitrator's determination to writing, including the reasons for the determination, and, if the arbitrator is not the registrar, forward the determination to the registrar.

(13) The reasons for a determination must be specified to the extent that, in the opinion of the arbitrator, they make the parties to the dispute aware of the arbitrator's view of the case made by each of them.

(14) The registrar must, forthwith after completing or receiving a determination in writing, send a copy of the determination, endorsed with the date of sending, to each party to the dispute.

(15) If the arbitrator is not the registrar, the arbitrator's fees may be assessed by consent of the parties to the dispute, and failing any such consent:

- (a) the arbitrator's fees may be determined by the arbitrator in accordance with any applicable scale of fees to arbitrators, and
- (b) if there is no applicable scale of fees to arbitrators, the Tribunal or registrar may determine the arbitrator's fees at an amount not exceeding the amount that would be payable if the work done by the arbitrator had been work done by a legal practitioner.

(16) Unless the Tribunal or registrar otherwise orders, the fees payable to an arbitrator and any other fees or other expenses incurred in respect of an arbitration are:

- (a) payable equally between the parties to the dispute, and
- (b) payable in the first instance by the party (if any) who requested the referral to arbitration, and
- (c) recoverable by any party who has paid them against the other parties to the dispute proportionately.

(17) Costs in respect of an arbitration are within the discretion of the arbitrator, and assessable, as though the arbitration were proceedings before the Tribunal and the arbitrator were the Tribunal.

(18) The determination of an arbitrator may be called in question on a matter of fact or law, but only on application made under section 38 (4) of the Act.

(19) An application under section 38 (4) of the Act must be made within 28 days of the date of sending endorsed under subrule (14) on the determination the subject of the application.

EXPLANATORY NOTE

- (a) This note does not form part of the rule.
- (b) The purpose of the rule is to make provisions made requisite by the enactment of the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998*.

David Martin

Secretary to the Rule Committee