



New South Wales

Dust Diseases Tribunal Amendment (Claims Resolution Process) Regulation 2005

under the

Dust Diseases Tribunal Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Dust Diseases Tribunal Act 1989*.

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Attorney General

Explanatory note

The object of this Regulation is to amend the *Dust Diseases Tribunal Regulation 2001* so as:

- (a) to provide that evidence given to a mediator at the conclusion of a mediation session may, in certain circumstances, be taken by means of a telecommunications link, and
- (b) to provide that evidence given to a mediator at the conclusion of a mediation session may, in certain circumstances, be taken from a plaintiff who is outside New South Wales, and
- (c) to make provision for the service of documents with respect to the claims resolution process, and
- (d) to provide that the Christmas/New Year period may be ignored when reckoning time for the purposes of the claims resolution process, and
- (e) to effect minor law revision.

This Regulation is made under the *Dust Diseases Tribunal Act 1989*, including section 32H (Regulations to promote claims resolution).

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Clause 1 Dust Diseases Tribunal Amendment (Claims Resolution Process)
 Regulation 2005

Dust Diseases Tribunal Amendment (Claims Resolution Process) Regulation 2005

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Dust Diseases Tribunal Act 1989

1 Name of Regulation

This Regulation is the *Dust Diseases Tribunal Amendment (Claims Resolution Process) Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

3 Amendment of Dust Diseases Tribunal Regulation 2001

The *Dust Diseases Tribunal Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 11 Definitions

Insert at the end of the clause:

- (2) Unless the parties otherwise agree, the period from the beginning of 25 December until the end of 9 January next following is to be ignored for the purpose of reckoning the time fixed by this Regulation for the doing by a party of any act in connection with the claims resolution process.
- (3) Subclause (2) does not prevent any business in connection with the claims resolution process from being conducted during the period referred to in that subclause.

[2] Clause 17 Effect of claim being subject to claims resolution process

Insert before clause 17 (2) (a):

- (a1) the service of the statement of claim on the defendant, including the service of the statement of claim outside Australia, or

[3] Clause 17A

Insert after clause 17:

17A Service of documents

- (1) Rules 10.5–10.19, 10.21 and 10.22 of the *Uniform Civil Procedure Rules 2005* apply to and in respect of the service of documents for the purposes of this Part in the same way as they apply to and in respect of the service of documents for the purposes of proceedings in the Tribunal.
- (2) Pending the commencement of section 9 of the *Civil Procedure Act 2005*:
 - (a) the reference in subclause (1) to rules 10.5–10.19, 10.21 and 10.22 of the *Uniform Civil Procedure Rules 2005* is taken to be a reference to the correspondingly numbered provisions of Schedule 7 to that Act, and
 - (b) for the purposes of subclause (1), those correspondingly numbered provisions are taken to apply, as rules of court, to proceedings in the Tribunal.

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Schedule 1 Amendments

- (3) In the case of a defendant who is outside Australia, any document to be served for the purposes of this Part may be served on the defendant:
- (a) in the same manner as that in which the relevant statement of claim was served on the defendant, or
 - (b) in such other manner as the parties may agree.

[4] Clause 22 Defendant to provide reply to claim

Insert “business” before “days” in clause 22 (8).

[5] Clause 23 Requests for more information about dispute

Insert “business” before “days” in clause 23 (2).

[6] Clauses 35A, 35B and 35C

Insert after clause 35:

35A Taking evidence by telecommunications link

- (1) This clause applies to a plaintiff, whether in New South Wales or elsewhere:
- (a) who is the subject of a medical practitioner’s certificate under clause 32 (3) to the effect that he or she is not fit to be present at a mediation session, or
 - (b) in respect of whom the parties are in agreement that he or she should be allowed to give evidence by means of a telecommunications link.
- (2) For the purposes of clause 35, a plaintiff to whom this clause applies may give evidence by means of a telecommunications link and, for that purpose, anything that needs to be done in order to enable the plaintiff’s evidence to be so given (such as the administration and taking of an oath) may also be done by such means.

35B Taking evidence outside New South Wales

- (1) For the purposes of clause 35, a plaintiff may give evidence on oath before a mediator outside New South Wales, but only if:
- (a) the plaintiff is the subject of a medical practitioner’s certificate under clause 32 (3) to the effect that he or she is not fit to be present at a mediation session, and
 - (b) the defendant on whose application the plaintiff is required to give evidence requests that the plaintiff’s evidence be so given, and

- (c) the mediator is satisfied that it is appropriate in all of the circumstances for the plaintiff's evidence to be so given.
- (2) Without limiting clause 35 (10), a defendant at whose request evidence is given by the plaintiff under this clause is liable for the costs incurred by the mediator and the plaintiff's legal representatives in travelling to the place at which the evidence is to be given. If more than one defendant makes the request, the defendants are liable in equal shares for those costs.

35C Application of Uniform Civil Procedure Rules 2005 to giving of evidence

- (1) Rules 24.9 and 24.11–24.15 of the *Uniform Civil Procedure Rules 2005* apply for the purposes of clause 35 in the same way as they apply for the purposes of proceedings in the Supreme Court, and so apply as if a reference in those rules to an examiner were a reference to a mediator.
- (2) Pending the commencement of section 9 of the *Civil Procedure Act 2005*:
 - (a) the reference in subclause (1) to rules 24.9 and 24.11–24.15 of the *Uniform Civil Procedure Rules 2005* is taken to be a reference to the correspondingly numbered provisions of Schedule 7 to that Act, and
 - (b) for the purposes of subclause (1), those correspondingly numbered provisions are taken to apply, as rules of court, to proceedings in the Supreme Court.