

# Dust Diseases Tribunal Rules (1990 SI 91)

[1990-91]



New South Wales

## Status Information

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### Authorisation

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# Dust Diseases Tribunal Rules (1990 SI 91)



New South Wales

## 1 Name of Rules

These Rules may be cited as the *Dust Diseases Tribunal Rules*.

## 2 Supreme Court rules to apply

- (1) Except as otherwise provided by these Rules, the rules of court of the Supreme Court apply to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction in the same way as they apply to proceedings before the Supreme Court and to matters in respect of which that Court has jurisdiction.
- (2) The rules of court of the Supreme Court apply with necessary modifications and to the extent that they are not inconsistent with the *Dust Diseases Tribunal Act 1989*.

## 3 Registrar may extend limitation period

The registrar may exercise the functions of the Tribunal under Division 3 of Part 3 of the *Limitation Act 1969*.

## 4 (Repealed)

## 5 Provisional damages

- (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 terms 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.

## **6 Discovery and inspection of documents**

- (1) Part 23 of the *Supreme Court Rules 1970*, as substituted by Amendment No 303 published in the Government Gazette of 19 July 1996 at page 4336, does not apply to proceedings before the Tribunal or to matters in respect of which the Tribunal has jurisdiction.
- (2) Part 23 of the *Supreme Court Rules 1970*, as it was immediately before the amendment referred to in subrule (1), applies to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction.

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

- (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:

## **7 Discovery in other proceedings**

- (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).

## **8 Standard list of documents**

- (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.

### **8 Limitation of section 25A (Material already obtained)**

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.

### **9 General issues already determined**

(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.

### **10 Particulars where expedited hearing sought**

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 a 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.

### **11 Proceedings against more than one alleged tortfeasor**

(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.

## **12 Application of section 151AC of the [Workers Compensation Act 1987](#)**

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.

## **13 Arbitration for insurance purposes**

(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.

#### **14 Provision of information as to amount recoverable by Dust Diseases Board**

- (1) The defendant in proceedings referred to in section 8E (3) of the *Workers' Compensation (Dust Diseases) Act 1942* (whether the proceedings were commenced before or after the commencement of this rule) must notify the Board under that Act in writing of an award, judgment, settlement or agreement resulting in the final determination of the proceedings.
- (2) The notification must be given within 28 days after that final determination.
- (3) The notification must be accompanied by the documents that are required to accompany a notification under clause 14 of the *Workers Compensation (Dust Diseases) Regulation 1998*.
- (4) In this rule:  
***final determination***, in relation to proceedings, includes a final determination by judgment, verdict, award, settlement, agreement, dismissal, discontinuance or otherwise.