

Dust Diseases Tribunal Regulation 2019

[2019-405]



New South Wales

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New South Wales

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Dust Diseases Tribunal Regulation 2019



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Dust Diseases Tribunal Regulation 2019*.

2 Commencement

This Regulation commences on 1 September 2019 and is required to be published on the NSW legislation website.

Note—

This Regulation repeals and replaces the *Dust Diseases Tribunal Regulation 2013*, which would otherwise be repealed by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

corporation has the same meaning as in section 57A of the *Corporations Act 2001* of the Commonwealth.

initiating process, in relation to any proceedings, means the document by the filing of which the proceedings are commenced.

rules of court means rules under section 33 of the Act or uniform rules under the *Civil Procedure Act 2005* applicable to proceedings on a claim.

the Act means the *Dust Diseases Tribunal Act 1989*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation (other than those in Schedule 1) do not form part of this Regulation.

Part 2 Fees

4 Fees payable in respect of Tribunal proceedings

- (1) Subject to this Regulation, the fee that a person must pay in respect of a matter referred to in Column 1 of Schedule 1 is—
 - (a) if the person is a corporation or an incorporated partnership and a fee is specified in Column 3 of that Schedule—the fee so specified, or
 - (b) in any other case—the fee specified in Column 2 of that Schedule.
- (2) A corporation or incorporated partnership is required to pay the standard fee (instead of the higher fee for a corporation) if the corporation or incorporated partnership produces evidence to satisfy the registrar that—
 - (a) its turnover in the financial year immediately preceding the financial year in which the fees are to be taken was less than \$200,000, or
 - (b) if the corporation or incorporated partnership has not been in existence for a full financial year—its turnover in its first financial year is likely to be less than \$200,000.

5 Fees not chargeable to the Crown

- (1) No fee is chargeable to the Crown or any other person with respect to any document or service filed or provided—
 - (a) for the Government of New South Wales, or
 - (b) for any New South Wales Government Department, or
 - (c) for any statutory body whose expenditure is paid out of the Consolidated Fund.
- (2) The registrar may require evidence to be furnished for the purpose of deciding whether a statutory body's expenditure is paid out of the Consolidated Fund.
- (3) This clause does not prevent the Crown or any statutory body from recovering a fee from any person that, had it been paid, would have been recoverable from that person.

6 Pro bono cases

- (1) The taking of a fee for the filing of any initiating process (or a cross-claim) on behalf of a pro bono party to proceedings is to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if in relation to the claim (or cross-claim)—

- (a) judgment is against that party, or
 - (b) judgment is in favour of that party, but costs and damages are not awarded (or only nominal damages are awarded) in the party's favour.
- (3) The registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this clause, a fee has not been taken for the filing of any initiating process (or cross-claim) on behalf of a pro bono party to those proceedings.
- (4) For the purposes of this clause, a party is a **pro bono party to proceedings** if—
- (a) the party is being represented under the pro bono scheme of the Law Society of New South Wales or the pro bono scheme of the New South Wales Bar Association, and
 - (b) a solicitor (in the case of the Law Society's scheme), or a barrister (in the case of the Bar Association's scheme), acting for the party certifies in writing to the registrar, with whom the initiating process (or cross-claim) is lodged on behalf of the party, that the party is being so represented.

7 Postponement of fees in certain other cases

- (1) The taking of any fee in respect of the business of the Tribunal in relation to proceedings involving a pensioner party or legally assisted party is, if the fee is payable by the pensioner party or legally assisted party, to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if—
- (a) judgment in the proceedings is against the pensioner party or legally assisted party, or
 - (b) judgment is in favour of the pensioner party or legally assisted party, but costs and damages are not awarded (or only nominal damages are awarded) in the party's favour.
- (3) The registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this clause, a fee in respect of any business of the Tribunal has not been taken on behalf of a pensioner party or legally assisted party to those proceedings.
- (4) For the purposes of this clause—
- (a) a party to proceedings is a **pensioner party** if the party holds a card issued by the Commonwealth Government that entitles the party to Commonwealth health concessions, and

- (b) a party to proceedings is a **legally assisted party** if the party is receiving legal assistance through a community legal service within the meaning of the *Legal Profession Uniform Law (NSW)*.

8 Persons by and to whom fees payable

- (1) Any fee charged under this Regulation for any document or service is payable to the registrar by—
- (a) the person at whose request the document is filed or the service rendered, or
 - (b) a corporation or incorporated partnership on whose behalf a request is made to file a document or render a service.
- (2) For the purposes of subclause (1), the fee provided for by item 14 of Schedule 1 is taken to be payable by the person who filed the notice to produce referred to in that item.
- (3) If a document is filed or a service rendered at the request of a person acting as an agent for another person, each of those persons is jointly and severally liable for payment of any fee.
- (4) For the purposes only of subclause (3), a solicitor or other person by whom a person is carrying on proceedings is taken to be acting as an agent for that person.

9 First directions hearing fee

- (1) A fee is payable in relation to the first directions hearing in proceedings as follows—
- (a) if the Tribunal makes an order as to the payment of the fee—by the parties in the proportions so ordered,
 - (b) if the hearing involves a cross-claim or more than one cross-claim only—by the cross-claimant or first cross-claimant in any cross-claim,
 - (c) in any other case—by the claimant (and not by any cross-claimant).

Note—

This fee is recoverable as a disbursement and may be the subject of an award of costs.

- (2) If a party is carrying on proceedings by a solicitor or other person, the party and solicitor or other person are jointly and severally liable for the payment of the first directions hearing fee.
- (3) A first directions hearing fee becomes payable—
- (a) immediately after a date is allocated for the first directions hearing in the Tribunal, as referred to in clause 67, or

- (b) immediately after a date is allocated for the first directions hearing in the Tribunal for a claim determined to be urgent by the Tribunal on application by the claimant under Division 2 of Part 3, or
 - (c) when the Tribunal or registrar notifies the parties in writing of the Tribunal's intention to allocate a date for a first directions hearing for the proceedings, whichever occurs first.
- (4) A first directions hearing fee is not payable in relation to any hearing for the purpose of the Tribunal making orders to give effect to any agreement or arrangement between the parties as to settlement of the claim or cross-claim.

10 Other provisions relating to fees

- (1) A fee charged under this Regulation becomes payable when the document concerned is filed or the service concerned is rendered.
- (2) However, the registrar, when requested to file a document or render a service—
 - (a) may require any fee for the document or service to be paid before the document is filed or the service rendered, or
 - (b) may, by order in writing, direct that the whole or any part of the fee be postponed, waived or remitted, subject to the conditions (if any) the registrar thinks fit to impose.
- (3) A reference in this clause to the registrar includes a person to whom the registrar delegates the registrar's powers under this clause.
- (4) This clause is subject to clauses 6 and 7.

Part 3 Claims resolution process for asbestos-related conditions

Division 1 Preliminary

11 Definitions

- (1) In this Part—

asbestos-related condition means a dust-related condition that is asbestosis, asbestos-induced carcinoma, an asbestos-related pleural disease or mesothelioma.

authorised representative of a deceased plaintiff means—

- (a) the person who represented the plaintiff in the proceedings for the claim, or
- (b) if the plaintiff was not represented—the plaintiff's legal personal representative.

business day means a day that is not a Saturday, a Sunday or a public holiday

throughout New South Wales.

claim means a claim in proceedings in the Tribunal brought or to be brought under section 11 of the Act or transferred under section 12 of the Act.

claims resolution process means the provisions of this Part.

compensation to relatives claim means a claim on a cause of action under the [Compensation to Relatives Act 1897](#).

Contributions Assessor means a Contributions Assessor appointed under Division 5.

first defendant on a claim means the defendant first named in the plaintiff's statement of claim.

malignant claim means a claim in respect of asbestos-induced carcinoma or mesothelioma (whether or not the claim is also in respect of any other dust-related condition).

mediation means mediation under this Part.

non-malignant claim means a claim in respect of an asbestos-related condition that is not asbestos-induced carcinoma or mesothelioma (and that is not a malignant claim).

original defendant on a claim means a defendant on the claim before the joinder of any other person as a defendant and does not include any defendant to a cross-claim on the claim.

party to a claim includes any cross-defendant on the claim.

required information exchange means the service on each defendant or cross-defendant of the statement of particulars of the claim against the defendant or cross-defendant and the service by each defendant or cross-defendant of the defendant's or cross-defendant's reply to the claim or cross-claim, as required under this Part.

single claims manager or **SCM**—see clause 63.

- (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.

12 Objectives of claims resolution process

The objectives of the claims resolution process are as follows—

- (a) to foster the early provision of information and particulars concerning claims in respect of asbestos-related conditions,
- (b) to encourage early settlement of claims,
- (c) to reduce associated legal and administrative costs.

13 Part applies only to asbestos-related claims

- (1) This Part applies to a claim in respect of an asbestos-related condition that is made by the person who is or was suffering from the asbestos-related condition (or by a person claiming through that person, including a compensation to relatives claim) or that is a cross-claim by a defendant on a claim in respect of an asbestos-related condition.
- (2) For the avoidance of doubt, this Part does not apply to separate proceedings between defendants (including cross-defendants) relating to a contributions assessment.

14 Service of statement of particulars on last of original defendants

A reference in this Part to the service of the plaintiff's statement of particulars on the last of the original defendants is a reference to service under Division 3 of the plaintiff's statement of particulars—

- (a) if there is only one original defendant—on that defendant, or
- (b) if there is more than one original defendant—on the last of the original defendants to be served.

15 Procedural law of the State

The provisions of this Part form part of the procedural law of the State for the purposes of the determination of any claim.

Division 2 Claims subject to the claims resolution process

16 Which claims are subject to the claims resolution process

- (1) A claim to which this Part applies is subject to the claims resolution process once the claim is filed.

Note—

Clause 20 provides for some claims to be removed from the claims resolution process.

- (2) A claim remains subject to the claims resolution process—
 - (a) until the claim is settled by mediation or otherwise and the Tribunal makes an order to give effect to the settlement, or
 - (b) if the claim is not settled by the time mediation is concluded—until mediation is concluded and clause 40 has been complied with.

- (3) The parties to a claim can agree to extend the period for which the claim remains subject to the claims resolution process.
- (4) If a significant change in the medical condition of the plaintiff occurs after the claim is filed, the parties to the claim can agree (on one or more occasions) to suspend the claims resolution process for a period of up to 10 business days for malignant claims or 20 business days for non-malignant claims.
- (5) Time does not run during the period of suspension for the purposes of any period within which anything is required to be done by a party under the claims resolution process.
- (6) Within 5 business days after any agreement is made under this clause, the plaintiff must notify the registrar in writing of the agreement.

17 Effect of claim being subject to claims resolution process

- (1) While a claim is subject to the claims resolution process—
 - (a) the parties to the claim must comply with the provisions of this Part, and
 - (b) proceedings in the Tribunal to determine the claim are deferred and the claim is not subject to case management by the Tribunal, and
 - (c) the claim is not subject to the provisions of rules of court, or any direction or order of the Tribunal under a provision of the Act, any other Act or rules of court, as to any steps to be taken in proceedings on the claim or for the referral of the claim for alternative dispute resolution, such as mediation.

Note—

Clause 20 provides for the removal of certain claims from the claims resolution process.

- (2) This clause does not affect the application of the practice and procedures of the Tribunal with respect to—
 - (a) the service of the statement of claim or cross-claim, including the service of the statement of claim outside Australia, or
 - (b) the amendment of the statement of claim to join a party before the plaintiff's statement of particulars is served, or
 - (c) the amendment of the statement of claim to join a party to the claim at the request of the plaintiff where the Tribunal is satisfied that it is necessary to do so to preserve the plaintiff's cause of action, or
 - (d) the amendment of the statement of claim to add a compensation to relatives claim after the death of the plaintiff, or

- (e) the making of cross-claims, except to the extent of any inconsistency with clause 25, or
- (f) the making of orders to give effect to any agreement or arrangement between the parties, whether resulting from an offer of compromise or otherwise, or
- (g) the issue and return of subpoenas, or
- (h) the granting of leave to commence an action under section 5 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017*, or
- (i) the making of directions or orders to give effect to, or consequent on, an amendment of the statement of claim to institute proceedings against a new party or to substitute a party, or
- (j) the amendment of the statement of claim to discontinue proceedings against a party.

Note—

If a claim is not settled through the claims resolution process, proceedings in the Tribunal can proceed or the parties can decide to continue with attempts to settle the claim.

- (3) Without limiting subclause (1), while a claim is subject to the claims resolution process and before the plaintiff's statement of particulars is served, the plaintiff may, without leave, amend the plaintiff's statement of claim.
- (4) Subclause (3) does not apply if the plaintiff's statement of claim is filed in conjunction with an application under clause 20 for a determination by the Tribunal that the claim is urgent and that application results in the making of a determination.

Note—

When a statement of claim is filed in conjunction with an application under clause 20, clause 23(7) provides that a statement of particulars is not required.

18 Suspension of claims resolution process if plaintiff dies

- (1) If the plaintiff dies, the claims resolution process is suspended and time does not run for the purposes of any period within which anything is required to be done by a party until the Tribunal grants leave to amend the statement of claim—
 - (a) to substitute the plaintiff, or
 - (b) to add a compensation to relatives claim.

Note—

Clause 21 contains provisions dealing with the resumption of claims in the claims resolution process following plaintiff's death.

- (2) If the plaintiff dies, the authorised representative of the deceased plaintiff must notify

the following persons in writing of the plaintiff's death (and the date of that death) as soon as practicable after becoming aware of the plaintiff's death (unless the death occurred before 12 March 2007)—

- (a) each defendant,
 - (b) the registrar,
 - (c) if a mediator has been appointed, the mediator.
- (3) The suspension of the claims resolution process under this clause does not apply to the operation of Division 5 (the **apportionment process**) and the apportionment process is to proceed, unless all the defendants agree that the apportionment process is to be suspended and the registrar has been notified in writing of that agreement within 3 business days after the defendants received notice of the plaintiff's death.
 - (4) It is the responsibility of the single claims manager or (if there is no single claims manager) the first defendant to notify the registrar in writing (within the time required by subclause (3)) of an agreement by all the defendants that the apportionment process is to be suspended.
 - (5) If the plaintiff died before 12 March 2007 but the apportionment process proceeds pursuant to this clause, Division 5 applies for that purpose as if a requirement that anything be done by a party within a specified period after service of the plaintiff's statement of particulars were a requirement that the thing be done within that specified period after 26 March 2007.
 - (6) Nothing in this clause requires a compensation to relatives claim to be added to the claim of the deceased plaintiff.

19 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) 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 any other manner as the parties may agree.

20 Removal of certain claims from claims resolution process

- (1) A claim is removed from (and is therefore not subject to) the claims resolution process

if—

- (a) the Tribunal determines, on application by the claimant and on the basis of medical evidence presented for the claimant, that the claim is urgent, or
- (b) all the parties to the claim agree, following the required information exchange, that the claim should not be the subject of the claims resolution process and notify the registrar accordingly, or

Note—

For example, the parties may consider that the claim raises novel issues (in the nature of a “test case”) that are unlikely to be resolved by the claims resolution process.

- (c) the Tribunal determines on application by a party (the **applicant**) that the claim should be removed from the claims resolution process because another party to the claim has failed to comply with a requirement of the claims resolution process and that failure has resulted in substantial prejudice to the applicant or substantial delay, or
 - (d) the Tribunal determines, of its own motion, that the claim should be removed from the claims resolution process because no documents have been filed, and the claim has not otherwise progressed in the claims resolution process, within the previous 12 months.
- (2) A claim is **urgent** only if the Tribunal is satisfied that, as a result of the seriousness of the claimant’s medical condition—
- (a) the claimant’s life expectancy is so short as to leave insufficient time for the requirements of the claims resolution process to be completed and the claim finally determined by the Tribunal, if required, on an expedited basis, or
 - (b) the claimant is not likely to be able to give oral evidence or participate in Tribunal processes once the claims resolution process is completed.
- (3) If a non-malignant claim would not be urgent if it were to be treated for the purposes of the claims resolution process as a malignant claim, the Tribunal must (instead of determining that the claim is urgent) order that the claim is to be treated as a malignant claim for the purposes of the claims resolution process.
- (4) A non-malignant claim is also to be treated as a malignant claim for the purposes of the claims resolution process if all the parties to the claim agree that the claim should be treated as a malignant claim and notify the registrar accordingly.
- (5) An application for a determination by the Tribunal that a non-malignant claim is urgent must not be made until the parties have used their best efforts to reach agreement as provided by subclause (4).
- (6) The Tribunal is not to determine that a claim should be removed from the claims

resolution process because a party to the claim has failed to comply with a requirement of the claims resolution process unless the Tribunal is satisfied that the failure is continuing and that the party has been notified of and requested to remedy the failure.

Note—

A claim that is removed from the claims resolution process under subclause (1)(b) or (c) is required under clause 67 to be referred to the Tribunal for directions.

- (7) If a claim is removed from the claims resolution process because the Tribunal determines under this clause that the claim is urgent, the Tribunal must consider whether to order the application of Divisions 4 and 5 to the claim, and—
- (a) if the Tribunal does so order—
- (i) those Divisions apply as if the claim were still subject to the claims resolution process (subject to any modifications ordered under subparagraph (ii)), and
 - (ii) the Tribunal may, in ordering the application of those Divisions to the claim, order that those Divisions apply subject to specified modifications, and
 - (iii) the Tribunal must by its order specify the period within which mediation or apportionment under the applied Divisions must be completed, or
- (b) if the Tribunal does not so order despite an application for an order by a party to the claim, the Tribunal must give its reasons for not so ordering.
- (8) If a claim has been removed from the claims resolution process under subclause (1)(a) and the plaintiff to the claim has died after that removal, the claim is returned to the claims resolution process (and becomes subject to that process) on the occurrence of either of the following events—
- (a) if a hearing date for the claim had not been set before the plaintiff's death—the Tribunal grants leave to amend the statement of claim to substitute the plaintiff or to add a compensation to relatives claim (unless each of the parties to the claim notifies the registrar in writing that the parties have agreed that the claim should not be returned to the claims resolution process),
- (b) if a hearing date for the claim had been set before the plaintiff's death—each of the parties to the claim has notified the registrar in writing that the parties have agreed that the claim should be returned to the claims resolution process.

Note—

If the parties do not come to the agreement referred to in paragraph (b), the claim is not returned to the claims resolution process and will continue to be dealt with by the Tribunal.

- (9) Without limiting subclause (1)(a), medical evidence may be presented for the claimant for the purposes of subclause (1)(a)—

- (a) by means of an affidavit that sets out a medical opinion that has been given orally (including an affidavit by a person who heard the oral medical opinion of the medical practitioner concerned), and
 - (b) even if there has not been compliance with the provisions of rule 31.23 of the *Uniform Civil Procedure Rules 2005* (including the expert witness code of conduct in Schedule 7 to those Rules).
- (10) If evidence under subclause (9) is not available, evidence of the following matters may be presented by means of an affidavit by the claimant's spouse or de facto partner, the claimant's legal practitioner or other person—
- (a) the claimant's age,
 - (b) the nature of the claimant's dust-related condition,
 - (c) the date the claimant was diagnosed with a dust-related condition,
 - (d) any other diagnosed medical conditions,
 - (e) whether or not the claimant is receiving palliative treatment.

21 Resumption of claims in claims resolution process following plaintiff's death

- (1) This clause applies to the following claims—
- (a) a claim where the claims resolution process has been suspended under clause 18(1), or
 - (b) a claim that has been removed from the claims resolution process under clause 20(1)(a) where the claim is to be returned to the claims resolution process under clause 20(8).
- (2) As soon as practicable after the notice referred to in clause 20(8)(b) has been given to the registrar and, in any case, before the next hearing date of the claim in the Tribunal, the authorised representative of the deceased plaintiff must provide each other party to the claim and the registrar with—
- (a) a proposal in writing (a **resumption proposal**) as to how the claims resolution process is to apply to the claim (the **resumed claim**) after resumption, and
 - (b) any notice of motion to substitute the plaintiff or to add a compensation to relatives claim.
- (3) The authorised representative's resumption proposal is to identify the following—
- (a) the steps already taken by the parties in connection with the claim that should be taken to constitute performance of particular steps in the claims resolution process,

- (b) the point in the claims resolution process that the claim should be regarded as having reached,
 - (c) any further steps that need to be taken by the parties to bring the claim to a particular point in the claims resolution process (including a timetable with specified dates for completing those steps),
 - (d) any modifications to the timetable for completion of the claims resolution process that may be necessary to enable completion of the claims resolution process, while giving effect to the maximum extent possible to the timetable for completion of that process as set out in this Part.
- (4) In relation to a claim that has been removed from the claims resolution process under clause 20(1)(a), the timetable for completion referred to in subclause (3)(d) is to be the timetable for completion of that process as set out in this Part for non-malignant claims, unless all the parties to the claim agree that the timetable for malignant claims is to apply.
- (5) If the parties have not reached agreement on the resumption proposal before the following times (as relevant), the Tribunal is to determine the matters in dispute—
- (a) the time that the claim is listed before the Tribunal for the purpose of making an order for the substitution of a party for a deceased plaintiff or to add a compensation to relatives claim,
 - (b) the time of the first hearing of the claim after the notice referred to in clause 20(8)(b) has been given to the registrar.
- (6) The matters agreed by the parties or determined by the Tribunal for the purposes of an authorised representative's resumption proposal have effect for the purpose of varying the requirements of this Part as to the time within which any relevant aspect of the claims resolution process must be completed, and this Part is varied accordingly in its application to the resumed claim concerned.

Division 3 Required information exchange

22 General obligations to update documents and information

A party to a claim who is required by a provision of this Part to provide documents or information to another party by way of a statement of particulars or reply must, while the claim is subject to the claims resolution process, update or notify any necessary changes to the documents and information provided (as and when any relevant new or changed documents or information become available).

23 Claimant to provide statement of particulars of claim

- (1) The plaintiff on a claim must file and serve on each original defendant (with the

plaintiff's statement of claim) a statement of particulars of the plaintiff's claim.

- (2) The plaintiff's statement of particulars—
 - (a) must be in the form set out in Form 1 in Schedule 2, and
 - (b) must specify the information required to complete that form, and
 - (c) must be accompanied by the documents and information required by the form (and is not required to be accompanied by any other documents or information).
- (3) If documents or information required to accompany the plaintiff's statement of particulars are not available to the plaintiff when the statement of particulars is filed and served—
 - (a) the statement must indicate this, and
 - (b) the plaintiff must provide the documents or information to each original defendant as and when they become available to the plaintiff.

Note—

The plaintiff should not obtain witness statements and expert or other reports before filing the statement of particulars. The defendant will indicate under clause 26(7) whether further information is required, having regard to the issues that remain in dispute.

- (4) The plaintiff's statement of claim in the proceedings is not properly served on the defendant until the statement of particulars has been served on the defendant.

Note—

Rules of court provide for the period for which a statement of claim remains valid for service after it is filed.

- (5) Within 5 business days after serving the plaintiff's statement of particulars on a defendant, the plaintiff must notify the registrar and each of the original defendants of the date on which the statement of particulars was served on the last of the original defendants.
- (6) A defendant is entitled to be informed by the registrar, on request to the registrar, of the date of service of the plaintiff's statement of particulars on the last of the original defendants.
- (7) This clause does not apply if the plaintiff's statement of claim is filed in conjunction with an application by the claimant under clause 20 for a determination by the Tribunal that the claim is urgent and the application results in the Tribunal making that determination.

Note—

When subclause (7) applies, the statement of claim will be regarded as having been served when it was actually served and a statement of particulars is not required.

24 Plaintiff to provide parties with a timetable for claims resolution process

- (1) The plaintiff is to provide the registrar and each original defendant with a timetable for the claims resolution process setting out the various stages of the process in its application to the claim based on the requirements of this Part.
- (2) The timetable is to be provided as soon as practicable after the plaintiff has served the plaintiff's statement of particulars on the last of the original defendants.

25 Cross-claims by defendant

- (1) An original defendant in proceedings must make any cross-claim as soon as practicable after being served with the plaintiff's claim in the proceedings.
- (2) Cross-claims by all defendants (including original defendants) must be filed and served within 10 business days for malignant claims, or 30 business days for non-malignant claims, after service of the plaintiff's statement of particulars on the last of the original defendants.
- (3) An original defendant may request the plaintiff to extend the time for filing and serving a cross-claim but can only make the request before the end of the period within which a cross-claim is required to be filed and served.
- (4) The time for filing and serving a cross-claim cannot be extended in total by more than 10 business days for malignant claims or 20 business days for non-malignant claims.
- (5) A plaintiff is taken to consent to a request to extend the time for filing and serving a cross-claim unless the plaintiff is able to demonstrate that the extension requested would result in substantial prejudice to the plaintiff.
- (6) If the time for filing and serving a cross-claim is extended, the original defendant must immediately notify the registrar in writing of the extension and the length (in business days) of the extension.
- (7) An extension of the time for filing and serving a cross-claim extends (for the period of the extension) all subsequent time periods within which anything is required to be done under the claims resolution process in respect of the claim concerned.
- (8) If a person is identified as the insurer of a defendant only after expiry of the period within which a cross-claim is required under this clause to be filed and served on the insurer—
 - (a) a cross-claim may, with the consent of the plaintiff, be filed and served on that insurer after the expiry of that period, and
 - (b) the plaintiff must not refuse that consent unless the plaintiff can establish that the joining of the insurer will result in substantial prejudice to the plaintiff, and

- (c) once joined, the insurer is entitled to update the defendant's reply, and
- (d) the joining of the insurer does not affect the running of any time period for the purposes of the claims resolution process.

(9) A cross-claim that is not filed and served as required by this clause cannot be made in the proceedings (but without affecting any right of a defendant to pursue the claim in separate proceedings commenced by the defendant).

Note—

Division 6 applies to a cross-claim that is not filed and served as required by this clause.

- (10) A defendant must serve a copy of the plaintiff's statement of claim and statement of particulars with the defendant's cross-claim. A defendant's cross-claim is not properly served until a copy of the plaintiff's statement of claim and statement of particulars is served.
- (11) A defendant's cross-claim must notify the cross-defendant of the date on which the plaintiff's statement of particulars was served on the defendant (or on the last of the original defendants on the claim to be served if there was more than one original defendant) as required by this Division.
- (12) An original defendant who is the sole defendant in proceedings must notify the plaintiff as soon as practicable after a cross-claim is filed.
- (13) For the avoidance of doubt, where an original defendant makes a cross-claim against a cross-defendant, the claim is, for the purposes of this Part, taken to be a claim involving more than one defendant.

26 Defendant to provide reply to claim

- (1) A defendant in proceedings must file and serve on the claimant and each other party to the claim (including other defendants) a reply to the claim against the defendant.
- (2) The defendant's reply—
 - (a) must be in the form set out in Form 2 in Schedule 2, and
 - (b) must specify the information required to complete that form, and
 - (c) must be accompanied by the documents and information required by the form (and is not required to be accompanied by any other documents or information), and
 - (d) in the case of the reply served on the plaintiff, is not required to specify the information required by Part 8 of the form.
- (3) If documents or information required to accompany a defendant's reply are not available to the defendant when the reply is filed and served—

- (a) the statement must indicate this, and
 - (b) the defendant must provide the documents or information to the claimant and each other party as and when they become available to the defendant.
- (4) A reply by an original defendant must be served within 20 business days for malignant claims, or 30 business days for non-malignant claims, after the claim is served on the defendant.
 - (5) A reply by a defendant other than an original defendant must be served within 30 business days for malignant claims, or 60 business days for non-malignant claims, after service of the plaintiff's statement of particulars on the last of the original defendants.
 - (6) If the plaintiff's claim alleges that the asbestos-related condition with which the claim is concerned occurred in the course of employment, the plaintiff's statement of particulars can require an early response on that issue from a defendant who is alleged to be an employer, in which case the defendant must, within 10 days after the claim is served on the defendant, provide the response and attach the evidence required by 3.1-3.3 of Part 3 of Form 2 in Schedule 2.
 - (7) A defendant's reply must indicate whether the defendant requires more information from the plaintiff about the plaintiff's claim and the nature of that information, and must indicate whether the defendant requires an opportunity to inspect any premises or place.
 - (8) The plaintiff must comply with any reasonable requirement of the defendant for more information concerning the plaintiff's claim (whether made as part of the defendant's reply or subsequently) and must provide that information as soon as practicable and, in any case, no later than 5 business days before the start of mediation.
 - (9) If 2 or more defendants to a claim are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) and represented in the proceedings by the same legal practitioner or firm of legal practitioners, those defendants may file and serve a joint reply to the claim (instead of each filing and serving individual replies) and are not required to serve the joint reply on each other.

(10) In this clause—

claim includes a cross-claim.

defendant includes a cross-defendant.

27 Joinder of additional defendants

- (1) If a defendant (a **new defendant**) is joined to a claim by a plaintiff after the statement of particulars has been filed and served, the claims resolution process is

suspended in its application to the original defendants from the time the new defendant is joined until the claims resolution process in its application to the new defendant has reached the same stage as the process had reached in its application to the original defendants.

- (2) Time does not run during the period of suspension for the purposes of any period within which anything is required to be done by any original defendant under the claims resolution process.
- (3) The plaintiff must submit, with the notice of motion to join the new defendant, a proposed timetable that identifies any modifications to the timetable for completion of the claims resolution process that may be necessary to enable completion of the claims resolution process, while giving effect to the maximum extent possible to the timetable for completion of that process as set out in this Part.
- (4) The Tribunal may make orders or directions relating to, or consequent on, the joinder of the new defendant and any order or direction has effect for the purpose of varying the requirements of this Part as to the time within which any relevant aspect of the claims resolution process must be completed, and this Part is varied accordingly in its application to the claim concerned.
- (5) If a new defendant is joined to a claim after an agreement or determination as to apportionment has been made under Division 5, that agreement or determination is set aside and Division 5 applies to the original defendants and the new defendant.

28 Requests for more information about dispute

- (1) If a defendant does not admit an issue, the plaintiff may request the defendant to provide the plaintiff with information not already provided to the plaintiff on which the defendant proposes to rely in respect of that issue, including documentary evidence, witness statements and a summary of expert medical opinions.
- (2) A defendant must comply with any reasonable requirement of the plaintiff under this clause and must provide that information as soon as practicable and, in any case, no later than 5 business days before the start of mediation.

29 Medical examinations

- (1) An original defendant who requires the plaintiff to attend for a medical examination in connection with the plaintiff's claim must notify the plaintiff of that requirement within—
 - (a) 10 business days for malignant claims involving only one defendant, or
 - (b) 20 business days for malignant claims involving more than one defendant, or
 - (c) 30 business days for non-malignant claims involving only one defendant, or

- (d) 50 business days for non-malignant claims involving more than one defendant, after service of the plaintiff's statement of particulars on the last of the original defendants.
- (2) Any medical examination of the plaintiff that an original defendant requires must take place within—
- (a) 20 business days for malignant claims involving only one defendant, or
 - (b) 30 business days for malignant claims involving more than one defendant, or
 - (c) 40 business days for non-malignant claims involving only one defendant, or
 - (d) 60 business days for non-malignant claims involving more than one defendant, after service of the plaintiff's statement of particulars on the last of the original defendants.
- (3) The period within which a medical examination is required to take place under subclause (2) may be varied by agreement between all the parties to the claim. Any variation has no effect on the running of any other time period for the purposes of the claims resolution process.
- (4) If more than one original defendant requires the plaintiff to attend for a medical examination in connection with the plaintiff's claim, the plaintiff is entitled to choose to have those medical examinations conducted as a joint examination (with one examination on one occasion by the medical practitioners concerned) as an alternative to attending each examination separately.
- (5) Subclause (4) does not apply to a medical examination required by a defendant if the defendant objects to the examination being conducted as part of a joint examination of the plaintiff.
- (6) An original defendant who obtains a report of the results of a medical examination of the plaintiff must on request by any cross-defendant provide the report to the cross-defendant.

Note—

Once a claim is no longer subject to the claims resolution process, a cross-defendant can seek the leave of the Tribunal under rules of court to attend for a medical examination.

30 Party changing facts relied on

- (1) After serving the party's statement of particulars or reply on a claim, a party to a claim may only change the facts on which the party relies (whether by way of addition, deletion or correction) if the change is due to—
- (a) the discovery by the party of facts that were not known to and not reasonably

discoverable by the party before serving the party's statement of particulars or reply, or

(b) the plaintiff remembering facts only after serving the plaintiff's statement of particulars, or

(c) a change by another party to the facts on which that other party relies.

(2) In determining whether facts were reasonably discoverable by a party, regard is to be had to what would be likely to be discovered by the party in the reasonable pursuit of the party's claim or defence.

(3) A fact is not reasonably discoverable by a party if the only way in which it could be discovered is by the exercise of a power of the Tribunal.

(4) A change to the facts on which a party relies must be notified to the other parties to the claim as soon as practicable after the party making the change becomes aware of the need for the change.

(5) This clause does not prevent a party changing the facts on which the party relies, but any change that is not authorised by this clause constitutes a contravention of this clause for the purposes of clause 69.

31 Access by parties to Dust Diseases Board file

(1) At the request of any party to a claim, the Dust Diseases Board must give the party access to and allow the party to make a copy of, or provide the party with a copy of, any file of information maintained by the Board for the purpose of or in connection with a claim by the plaintiff for payment of compensation under the *Workers' Compensation (Dust Diseases) Act 1942*.

(2) The Dust Diseases Board may require payment of a fee by a party to cover the Board's reasonable costs incurred under this clause.

Division 4 Compulsory mediation

32 Application to cross-defendants

A reference in this Division to a defendant includes a reference to a cross-defendant.

33 Compulsory mediation

(1) A claim that is subject to the claims resolution process must be referred for mediation under this Division.

(2) Referral of a claim for mediation does not prevent or interfere with the parties pursuing settlement negotiations outside of mediation.

34 Timetable for referral for mediation

- (1) The claim must be referred for mediation within—
 - (a) 30 business days for malignant claims involving only one defendant, or
 - (b) 50 business days for malignant claims involving more than one defendant, or
 - (c) 60 business days for non-malignant claims involving only one defendant, or
 - (d) 100 business days for non-malignant claims involving more than one defendant,after service of the plaintiff's statement of particulars on the last of the original defendants.
- (2) The plaintiff must, within one business day, notify the registrar in writing of the following—
 - (a) the claim being referred for mediation, or
 - (b) the claim being settled (unless an application for a consent judgment or order has been filed).
- (3) If a claim is not referred for mediation within the time required by this clause, the registrar is to refer the claim for mediation on the next business day following the end of that period.
- (4) Until the registrar has been notified that a claim has been settled or referred for mediation, the registrar is to presume that the claim has not been settled or referred for mediation, respectively.
- (5) If a claim involves more than one defendant, the claim must not be referred for mediation until—
 - (a) the defendants have reached agreement as to the contribution that each is liable to make to the plaintiff's damages, or
 - (b) if the defendants cannot reach agreement as to that apportionment, until the Contributions Assessor has determined the matter.
- (6) The registrar may, with the agreement of all the parties to a claim, defer referring the claim for mediation on one occasion only for the period agreed by the parties, but not exceeding—
 - (a) 5 business days for a malignant claim, or
 - (b) 20 business days for a non-malignant claim.
- (7) The period of any deferral is to be added to the relevant period in clause 35(1), so as to extend the period within which mediation of the claim concerned must be

concluded.

- (8) The registrar can delegate to any member of staff of the Tribunal any function of the registrar under this clause (except this power of delegation).

35 Timetable for conclusion of mediation

- (1) Mediation of a claim must be concluded within—
- (a) 45 business days for malignant claims involving only one defendant, or
 - (b) 60 business days for malignant claims involving more than one defendant, or
 - (c) 90 business days for non-malignant claims involving only one defendant, or
 - (d) 120 business days for non-malignant claims involving more than one defendant,
- after service of the plaintiff's statement of particulars on the last of the original defendants.
- (2) A mediator may defer mediation (on one or more occasions) to allow the parties sufficient time to properly consider information provided before or during mediation or to allow time for information not yet available to be provided, but must not defer mediation if the mediator is of the opinion that deferral would result in substantial prejudice to a party or substantial delay.
- (3) Deferral of mediation may be for a period not exceeding (on each occasion of deferral) 5 business days for a malignant claim or 20 business days for a non-malignant claim.
- (4) The period of any deferral is to be added to the relevant period in subclause (1), so as to extend the period within which mediation of the claim concerned must be concluded.

36 Referral for mediation—appointment of mediator

- (1) A claim is referred for mediation by the appointment of a mediator to conduct the mediation.
- (2) A mediator can be appointed—
- (a) by the parties by agreement, or
 - (b) by the registrar at the request of the parties, or
 - (c) by the registrar if the claim is referred for mediation by the registrar.
- (3) A mediator appointed by the registrar must be appointed from a list of mediators compiled by the President.

- (4) The President is to compile a list of persons considered by the President to be suitable to be mediators for the purposes of this Part. As far as practicable, mediators should be persons with experience in claims in respect of dust-related conditions.
- (5) The persons chosen by the President are to be chosen from among a list of persons nominated jointly by the Law Society of New South Wales and the New South Wales Bar Association or, failing a nomination, of the President's own choosing.
- (6) If an appointment of a mediator (the **former mediator**) by the registrar is revoked and a new appointment of a mediator is required, the registrar before the end of the next business day—
 - (a) must appoint another person as mediator (the **new mediator**), and
 - (b) notify the former mediator, the new mediator and the parties to the claim of the revocation and new appointment.

Note—

Section 47(1)(b) of the [Interpretation Act 1987](#) provides that, if an Act or instrument confers a power on any person or body to appoint a person to an office, the power includes power to remove or suspend, at any time, a person so appointed and power to appoint some other person to act in the office of a person so removed or suspended.

- (7) If an appointment of a mediator by the registrar is revoked, the time periods provided for by clause 35(1) are each extended by 2 business days.

37 Nature of mediation

- (1) Mediation for the purposes of this Part is a structured negotiation process in which the mediator, as a neutral and independent party—
 - (a) assists the parties to a claim to achieve their own resolution of the claim, and
 - (b) assists the parties to narrow the issues in dispute, and
 - (c) makes recommendations to the parties concerning the acceptance of offers and the likely outcome of proceedings.
- (2) It is the duty of each party to a claim that is referred for mediation to participate in the mediation in good faith.
- (3) A mediator may issue a certificate to the effect that in the mediator's opinion a party to a claim referred for mediation did not participate in good faith in the mediation.

Note—

A defendant may impose a monetary limit on the authority of a single claims manager to settle a claim on behalf of the defendant but must act reasonably in imposing that limit. The imposition of a monetary limit is an aspect of participation by a defendant in mediation and can be the subject of a certificate of the mediator under this clause. See clause 64.

38 Mediator may direct parties to provide additional information

- (1) If the mediator for a claim referred for mediation is satisfied that a party to the claim has not provided information that the party was required to include in or with the party's statement of particulars for the claim or reply to the claim (or has failed to provide sufficient information to comply with the requirement), the mediator may direct the party to provide the information within—
 - (a) 5 business days for a malignant claim, or
 - (b) 10 business days for a non-malignant claim.
- (2) The mediator may issue a certificate under clause 37(3) in relation to a party who does not comply with a direction given under subclause (1) if the mediator is satisfied that the party did not have reasonable grounds for failing to comply with the direction.

39 Representation at mediation sessions

- (1) Each defendant to a claim must be present or represented at a mediation session.
- (2) If there is a single claims manager for a claim—
 - (a) the single claims manager must be present or represented at a mediation session, and
 - (b) despite subclause (1), no other defendant for whom the single claims manager acts is required to be present or represented at a mediation session unless the mediator otherwise directs.
- (3) The plaintiff must be present at a mediation session (either in person or by audio visual link) unless a medical practitioner has certified that the plaintiff is not fit to be present.
- (4) The mediator may control who is in attendance at a mediation session and may limit the number of representatives that a party has at a mediation session.
- (5) A party represented at a mediation session must be represented by a person with sufficient authority to make binding decisions on behalf of the party with respect to the claim. The mediator may refuse to allow a person to represent a party at the mediation unless satisfied that the person has that authority.
- (6) The mediator may require that a defendant be represented at a mediation session by a designated officer of the defendant whose functions include the management or control of the administration of claims against the defendant (such as the officer designated by the title of claims manager or a similar title).

40 Unsuccessful mediation—agreement as to issues in dispute

- (1) If a claim that is the subject of mediation is not settled before the mediation is

required to be concluded, the mediator must—

- (a) notify the registrar that the claim has not been settled, and
 - (b) require the parties to the mediation to agree on which issues are in dispute between the parties and on the facts that are relevant to those issues.
- (2) The mediator is to certify as to what the parties have agreed as the issues in dispute and the facts relevant to those issues and is to file the certificate with the registrar and provide a copy of the certificate to each of the parties.
- (3) When a claim that is the subject of a mediator's certificate under this clause is before the Tribunal for determination—
- (a) the Tribunal must determine the claim on the basis that the issues agreed to be in dispute are the only issues in dispute between the parties and on the basis of the agreed facts, as certified by the mediator, and
 - (b) the parties are not permitted to raise any other issue as an issue in dispute between the parties.
- (4) If the parties to mediation do not agree on which issues are in dispute, each party must lodge with the Tribunal a statement of the issues that the party considers are in dispute and a statement of the facts as alleged by the party that are relevant to those issues.

41 Costs penalties for unmeritorious disputes

- (1) If a party to proceedings includes in its statement of the issues that the party considers are in dispute an issue that in the proceedings is not determined in favour of the party and that the Tribunal determines was unreasonably left in dispute, the party is liable to pay the costs of any other party to the proceedings, assessed on an indemnity basis, that are occasioned by establishing, or by preparation for the purpose of establishing, how the issue is to be determined.
- (2) In determining whether an issue was unreasonably left in dispute by a party, consideration must be given to the steps taken by the party to ascertain whether there was a reasonable basis for doing so.
- (3) For the purposes of this clause, when a party to proceedings admits that an issue is not an issue in dispute in the proceedings, the issue is considered to be an issue that has not been determined in favour of the party.
- (4) If a party to proceedings disputes a fact and subsequently that fact is proved in the proceedings or admitted for the purpose of the proceedings by the disputing party, and the Tribunal determines that the fact was unreasonably left in dispute, the disputing party is liable to pay the costs of any other party to the proceedings, assessed on an indemnity basis, occasioned by proof of the fact or preparation for the

purpose of proving the fact.

42 Challenge to defendant's contribution after successful mediation

- (1) If mediation of a claim results in settlement of the claim, the mediator may, on the application of a defendant who intends to dispute in subsequent proceedings the contribution that the defendant is liable to make to the damages recovered by the plaintiff, require the plaintiff to give evidence on oath before the mediator in respect of any matter that appears to the mediator to be relevant to the liability of any person to contribute in respect of damages payable on the claim.
- (2) If the plaintiff is to be required to give evidence under this clause, the mediator is to determine the arrangements for the taking of that evidence and advise the parties of those arrangements.
- (3) That evidence is to be given immediately following the conclusion of mediation unless the mediator determines that the giving of that evidence should be delayed.
- (4) A defendant who wants a plaintiff to give evidence pursuant to this clause must give notice to the mediator, the plaintiff and each other party to the claim.
- (5) That notice must be given at least 2 business days before the start of mediation. If the decision to require the plaintiff to give evidence is made after that (including after the start of mediation), the notice may still be given but this constitutes a failure to comply with this clause for the purposes of clause 69.
- (6) Once the plaintiff has given that evidence, the plaintiff cannot be required to give evidence in proceedings before the Tribunal in respect of the dispute unless the Tribunal is satisfied that a failure by the plaintiff to give the evidence concerned will cause substantial injustice to a defendant.
- (7) A record of the evidence given by the plaintiff before the mediator is admissible in proceedings before the Tribunal in respect of the dispute.
- (8) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of that evidence of the plaintiff or the use of that record to prove the existence of a fact that the plaintiff intended to assert by a representation made in that evidence.
- (9) For the purposes of this clause, the mediator may—
 - (a) require the plaintiff to take an oath or to make an affirmation in a form approved by the mediator, and
 - (b) administer an oath to or take an affirmation of the plaintiff.
- (10) A defendant at whose request evidence is given by the plaintiff under this clause is liable for the costs of, and associated with, the taking of that evidence (including the

costs of transcription services and costs for the time of the mediator but not including the costs of other parties). If more than one defendant makes the request, the defendants are liable in equal shares for those costs.

43 Taking evidence by audio visual 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 39(3) to the effect that the plaintiff is not fit to be present at a mediation session, or
 - (b) in respect of whom the parties are in agreement that the plaintiff should be allowed to give evidence by means of an audio visual link.
- (2) For the purposes of clause 42, a plaintiff to whom this clause applies may give evidence by means of an audio visual 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 means of an audio visual link.

44 Taking evidence outside New South Wales

- (1) For the purposes of clause 42, 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 39(3) to the effect that the plaintiff 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 42(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.

45 Application of [Uniform Civil Procedure Rules 2005](#) to giving of evidence

Rules 24.9 and 24.11-24.15 of the [Uniform Civil Procedure Rules 2005](#) apply for the purposes of clause 42 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.

46 Agreements and arrangements arising from mediation

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of the mediation of a claim.
- (2) The Tribunal is not to make an order entering judgment in favour of the plaintiff if the plaintiff has failed to provide any evidence that the plaintiff has been required to provide by the mediator under clause 42 and that failure is continuing, unless the failure is due to the death or permanent incapacity of the plaintiff.
- (3) This Division does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of mediation of a claim, in relation to the matters the subject of a mediation.

47 Liability of mediators

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done or omitted to be done in good faith for the purposes of a mediation under this Part.

48 Privilege and secrecy

- (1) In this clause, **mediation session** means a meeting arranged for the mediation of a claim and includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subclause (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to—
 - (a) a mediation session, or
 - (b) a document or other material sent to or produced to a mediator, or sent to or produced at the Tribunal or the office of the registrar, for the purpose of enabling a mediation session to be arranged.
- (3) The privilege conferred by subclause (2) only extends to a publication made—
 - (a) at a mediation session, or
 - (b) as provided by subclause (2)(b), or
 - (c) as provided by subclause (7).
- (4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body except as is otherwise specifically provided by this Part.
- (5) Except as provided by this Part, a document prepared for the purposes of, or in the

course of, or as a result of, a mediation session, or any copy of the document—

(a) is not admissible in evidence in any proceedings before any court, tribunal or body, and

(b) cannot be the subject of a subpoena issued in any proceedings before any court, tribunal or body.

(6) Subclauses (4) and (5) do not apply with respect to any evidence or document—

(a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or

(b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under subclause (7).

(7) A mediator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances—

(a) with the consent of the person from whom the information was obtained,

(b) in connection with the administration or execution of this Part,

(c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,

(d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,

(e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

49 Costs of mediation

(1) The costs of mediation are to be borne by—

(a) the parties to the claim in the proportions as the parties may agree among themselves if mediation results in settlement of the claim or the claim is otherwise settled, or

(b) the defendant (or all the defendants in equal shares) if mediation does not result in settlement of the claim and the claim is not otherwise settled.

(2) If there is a single claims manager for the claim, any costs of mediation payable by

the defendants for whom the single claims manager acts are payable by the single claims manager, and any payment by the single claims manager is to be reimbursed as a disbursement in accordance with clause 66.

- (3) Subclause (1) does not interfere with the power of the Tribunal to include costs of mediation in an award of costs to the party that is successful before the Tribunal but the Tribunal may decline to include costs of mediation in an award of costs if the Tribunal is satisfied that the party in whose favour the award is to be made did not participate in good faith in the mediation.
- (4) In this clause, **costs of mediation** includes—
 - (a) remuneration payable to the mediator, and
 - (b) if the parties failed to notify the registrar under clause 34(2) of the claim being referred for mediation or being settled—any costs resulting from that failure.

Division 5 Apportionment

50 Application to cross-defendants

- (1) A reference in this Division to a defendant includes a reference to a cross-defendant.
- (2) The settlement or determination of a plaintiff's claim (the **original claim**) does not affect the continued operation of this Division in relation to a cross-claim on that original claim and the apportionment of liability among cross-defendants on the cross-claim. For that purpose (and despite clause 16) the cross-claim remains subject to the claims resolution process.

51 Defendants to agree as to apportionment

- (1) The defendants to a claim who are alleged to be liable to contribute to any damages recovered by the plaintiff must agree among themselves as to the contribution that each is liable to make to those damages.
- (2) Agreement must be reached no later than 35 business days for malignant claims, or 70 business days for non-malignant claims, after service of the plaintiff's statement of particulars on the last of the original defendants.
- (3) The first defendant must file with the registrar an apportionment statement setting out details of the apportionment of liability that the defendants have agreed to.

52 Determination of apportionment failing agreement

- (1) If an apportionment statement setting out details of the apportionment of liability agreed to by the defendants has not been filed with the registrar by the end of the period within which the defendants are required to reach agreement as to apportionment, the registrar is to refer the matter to a Contributions Assessor for

determination on the next business day following the end of that period.

- (2) The registrar can delegate to any member of staff of the Tribunal any function of the registrar under this clause (except this power of delegation).
- (3) The registrar is to notify the plaintiff and each defendant of the referral of a matter to a Contributions Assessor.
- (4) The Contributions Assessor to whom a matter is referred is to determine the contribution that each defendant is liable to make and is to make that determination on the assumption that the defendants are liable and solely on the basis of—
 - (a) the plaintiff's statement of particulars and the defendants' replies on the claim, and
 - (b) standard presumptions as to apportionment determined by the Minister for the purposes of this clause by order published in the Gazette.

Editorial note—

For the standard presumptions as to apportionment determined by the Minister see the [Dust Diseases Tribunal \(Standard Presumptions—Apportionment\) Order 2007](#).

- (5) In addition to the documents referred to in subclause (4)(a), a Contributions Assessor may (but need not) take into account any of the following—
 - (a) any of the plaintiff's statement of particulars and the defendants' replies that were amended after they were first filed,
 - (b) any of the defendants' replies on the claim that were filed late.
- (6) The defendants may agree that for the purposes of the Contributions Assessor's determination a particular defendant should not be assumed to be liable to contribute, in which case the defendant is not to be assumed to be liable for that purpose (including for the purposes of the application in that case of the standard presumptions as to apportionment).
- (7) A Contributions Assessor's determination is to be made within 40 business days for malignant claims, or 80 business days for non-malignant claims, after service of the plaintiff's statement of particulars on the last of the original defendants.
- (8) Neither the referral of a matter for determination by a Contributions Assessor nor a determination of the matter by a Contributions Assessor prevents the defendants concerned from agreeing among themselves at any time as to the contribution that each is liable to make to the plaintiff's damages.
- (9) A determination of a Contributions Assessor under this Division cannot be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings. This subclause—

- (a) is not binding on the plaintiff, and
 - (b) does not change any law relating to causation as between the plaintiff and the defendants, and
 - (c) does not displace any law relating to the joint and several liability of the defendants, and
 - (d) does not prevent the subsequent taking, or determination by the Tribunal, of a dispute between defendants as to apportionment in a separate proceeding.
- (10) The registrar is to provide the plaintiff and each defendant with a copy of the Contributions Assessor's determination as soon as practicable after the determination is made.
- (11) If there is a clerical mistake, or an error arising from an accidental slip or omission, in a determination of a Contributions Assessor, the Contributions Assessor or another Contributions Assessor may correct the mistake or error—
- (a) of the Contributions Assessor's own motion within 7 business days after the determination is made, or
 - (b) on the application of any defendant (made to the Contributions Assessor whose determination is in question within 7 business days after the determination is made) as soon as practicable after the application for correction is made.
- (12) A defendant who applies for the correction of a mistake or error must give notice of the application to each other defendant.
- (13) If a mistake or error is corrected, the Contributions Assessor is to provide the corrected determination to the registrar and the registrar is to provide a copy of the corrected determination to each of the defendants.

53 Contributions Assessors

- (1) The Secretary of the Department of Communities and Justice is to appoint a panel of legal practitioners to be Contributions Assessors for the purposes of this Division.
- (2) A Contributions Assessor is entitled to remuneration in connection with the exercise of functions as a Contributions Assessor as the Secretary may determine from time to time.
- (3) If, because of a failure by a first defendant to file an apportionment statement with the registrar, a matter has been referred to a Contributions Assessor, the Contributions Assessor is similarly entitled to remuneration in connection with the purported exercise of functions as a Contributions Assessor as the Secretary may determine from time to time.

- (4) The amount of the remuneration of a Contributions Assessor is payable by the defendants in respect of whose liability to contribute the referral to the Contributions Assessor was made, and is payable by each in proportion to their determined shares of contribution.
- (5) If there is a single claims manager for the claim, any remuneration of a Contributions Assessor that is payable by the defendants for whom the single claims manager acts is payable by the single claims manager, and any payment by the single claims manager is to be reimbursed as a disbursement in accordance with clause 66.
- (6) If there is no single claims manager for the claim, the defendant whose determined share of contribution is greatest is required to pay to the Contributions Assessor the full amount of the Contributions Assessor's remuneration and has a right of contribution against the other defendants concerned for their proportionate shares of that remuneration.

54 Contributions Assessors—special provision for conflict of interest

- (1) If the Contributions Assessor to whom a matter is referred has acted for any of the defendants to the claim, or for any person against any of the defendants, within the period of 12 months before the matter is referred, the Contributions Assessor must notify the registrar of that fact (including relevant details) and each of the defendants in writing by the end of the next business day following the day on which the matter was referred to the Contributions Assessor.
- (2) A defendant (the **objector**) may object to the referral of the matter to the Contributions Assessor on the ground that the Contributions Assessor has acted for any of the other defendants, or for any person against the objector, within that 12 month period by giving notice in writing of the objection to the registrar. An objection under this subclause—
 - (a) must include the particulars of the grounds for objection, and
 - (b) must not be made more than one business day after the day on which the objector was notified of that fact by the Contributions Assessor.

Note—

A defendant may make an objection before being formally notified of the conflict of interest by the Contributions Assessor.

- (3) If the registrar receives an objection, the registrar must by the end of the next business day following the day on which the objection is received—
 - (a) refer the matter to another Contributions Assessor, and
 - (b) give notice in writing of that referral to each of the defendants and to the Contributions Assessor to whom the matter was previously referred.

- (4) When a matter is referred to another Contributions Assessor following an objection, the time periods provided for by the following provisions are each extended by 2 business days—
 - (a) clause 34(1),
 - (b) clause 35(1),
 - (c) clause 52(7).
- (5) When a matter is referred to another Contributions Assessor following an objection, this clause applies to that referral in the same way as it applies to the original referral, with the result that if the matter is again referred to another Contributions Assessor following an objection the time periods referred to in subclause (4) are each further extended by 2 business days.
- (6) The registrar can delegate to any member of staff of the Tribunal any function of the registrar under this clause (except this power of delegation).
- (7) Nothing in this clause prevents the registrar revoking a referral of a matter to a Contributions Assessor for any other reason.

55 Effect of agreement or determination as to apportionment

- (1) An agreement or determination as to apportionment among defendants for the purposes of this Division is conclusively binding on the defendants for the purposes of the settlement, or determination by the Tribunal, of the plaintiff's claim and payment of the plaintiff's damages.
- (2) The agreement or determination is not binding for the purposes of the subsequent determination by the Tribunal of a dispute between defendants as to apportionment in a separate proceeding.
- (3) A defendant may, within 12 months of the making of an agreement or determination as to apportionment, dispute the contribution that the defendant is liable to make by giving written notice to the other defendants and the registrar.
- (4) If a defendant disputes the contribution that the defendant is liable to make to damages recovered by the plaintiff and the judgment of the Tribunal in the dispute does not result in the defendant materially improving the defendant's position, the defendant is liable to pay the costs of each other party to the dispute occasioned by the dispute, assessed on an indemnity basis.
- (5) Even if the Tribunal's judgment does not result in the defendant materially improving the defendant's position, the defendant is not liable to pay costs under subclause (4) if—
 - (a) the Tribunal determines that the defendant is not liable on the claim, and

- (b) the ground on which the Tribunal makes that determination is a ground on which the defendant disputed liability on the claim and of which the defendant provided evidence in the defendant's reply to the claim, and
 - (c) the Tribunal determines that the ground was the principal or only ground on which the defendant disputed liability on the claim.
- (6) To the extent of any inconsistency between this clause and Part 5, this clause prevails.
- (7) For the purposes of this clause, the defendant is considered to **materially improve** the defendant's position only if the Tribunal's determination of the dispute results in a reduction of the defendant's contribution of at least 10% of the amount of the defendant's agreed or determined contribution or \$20,000, whichever is the greater.

56 Costs penalties where defendant disputes another defendant's defence

If the reply of a defendant (the **innocent defendant**) to a claim or cross-claim disputes liability on a ground that the innocent defendant's reply provides evidence of, any other defendant who disputes that ground is liable to pay the innocent defendant's costs, assessed on an indemnity basis, occasioned by the dispute if—

- (a) subsequently that ground is established in the proceedings by the evidence provided in the reply or admitted for the purpose of the proceedings by the disputing defendant, and
- (b) the Tribunal determines on that ground that the innocent defendant is not liable on the claim or cross-claim, and
- (c) the Tribunal determines that the ground was the principal or only ground on which the innocent defendant disputed liability on the claim.

Note—

The costs penalty provided by this clause does not apply if the innocent defendant escapes liability on a ground not raised in the innocent defendant's reply.

Division 6 Special provision for apportionment claims commenced after plaintiff's claim finalised

57 Application and interpretation

- (1) This Division applies to a claim for contribution (the **new cross-claim**) made by a defendant (including a cross-defendant) to a claim (the **original claim**)—
- (a) when proceedings on the new cross-claim are commenced after the original claim has been settled or determined, but only if the original claim was commenced by statement of claim filed on or after 1 July 2005, or
 - (b) when separate proceedings are commenced by a defendant following a failure to

comply with the requirements to file and serve a cross-claim under clause 25.

- (2) The plaintiff on the new cross-claim is referred to in this Division as the **initiating defendant** and a defendant on the new cross-claim is referred to as a **new defendant**. The defendants (including any cross-defendants) on the original claim are referred to as the **original claim defendants**.

58 New cross-claim subject to claims resolution process

- (1) Despite clause 16, a new cross-claim to which this Division applies is subject to the claims resolution process once the claim is filed and until—
- (a) the defendants to the claim agree as required by Division 5 to the contribution that each is liable to make to damages recovered by the plaintiff on the original claim, or
 - (b) failing agreement, a Contributions Assessor has determined under Division 5 the contribution that each defendant is liable to make.

Note—

Under clause 17, proceedings in the Tribunal to determine the new cross-claim are deferred while the claim is subject to the claims resolution process. Under clause 26, a defendant to a cross-claim is required to file and serve a reply to the cross-claim, subject to subclause (2). Cross-claimants are not required to provide a statement of particulars for their cross-claim.

- (2) Despite clause 26(5), a reply under clause 26 by a new defendant must be served within 30 business days after service of the new cross-claim statement of claim on the last of the new defendants.

59 Copies of original claim particulars and replies to accompany new cross-claim statement of claim

- (1) The initiating defendant must serve with the statement of claim for the new cross-claim copies of each of the following—
- (a) the statement of particulars of the plaintiff on the original claim, and
 - (b) the replies of each of the original claim defendants to the original claim, and
 - (c) an appropriately revised version of Part 8 of Form 2 of the initiating defendant's reply to the original claim against the defendant, and
 - (d) any agreement among the original claim defendants as to the contribution that each is liable to make to damages recovered on the original claim, and
 - (e) any determination by a Contributions Assessor as to the contribution that the original claim defendants are liable to make to damages recovered on the original claim.

- (2) If the plaintiff on the original claim did not file and serve a statement of particulars of the plaintiff's claim, the initiating defendant must (instead of serving a copy of the plaintiff's statement of particulars with the statement of claim for the new cross-claim) provide and serve with the statement of claim for the new cross-claim a statement that provides sufficient particulars of the original claim, based on information provided by the plaintiff in the plaintiff's statement of claim on the original claim and any other information provided by the plaintiff.
- (3) If the Tribunal determines that the initiating defendant failed to provide sufficient particulars of the original claim as required by subclause (2) and that as a result an issue was left in dispute between the initiating defendant and a new defendant in proceedings on the new cross-claim (being an issue subsequently determined in favour of the new defendant), the initiating defendant is liable to pay the new defendant's costs, assessed on an indemnity basis, occasioned by the dispute.

60 Notice to original claim defendants of new cross-claim

- (1) The initiating defendant must give notice in writing of the commencement of proceedings on the new cross-claim to each of the original claim defendants who was a party to the original claim at the time of the agreement or determination as to contribution on the original claim and must give that notice before or at the time that the statement of claim in the new cross-claim proceedings is served.
- (2) The initiating defendant must also serve on each of those original claim defendants, at the same time as the statement of claim for the new cross-claim is served—
 - (a) a copy of the statement of claim for the new cross-claim, and
 - (b) a copy of the appropriately revised version of Part 8 of Form 2 of the initiating defendant's reply to the original claim against the defendant (as served with the statement of claim for the new cross-claim).
- (3) Each original claim defendant may elect whether or not to be subject to a new apportionment of liability on the original claim among defendants including any new defendants.
- (4) An election must be made within 10 business days after the original claim defendant is served with a copy of the statement of claim for the new cross-claim.
- (5) An election is made by giving notice of the election in writing to the registrar, the initiating defendant and each of the other original claim defendants, accompanied by an appropriately revised version of Part 8 of Form 2 of the original claim defendant's reply to the original claim.
- (6) Failure to elect within the required time constitutes an election not to be subject to a new apportionment of liability.

- (7) If the initiating defendant or another original claim defendant did not file a reply to the original claim, an obligation under this Division to serve a copy of an appropriately revised version of Part 8 of Form 2 of the reply is to be read instead as an obligation to file and serve a reply under clause 26.
- (8) The initiating defendant must give notice in writing of the service of the new cross-claim to the registrar and must give that notice within 5 business days of the service of the statement of claim in the new cross-claim proceedings (or if there is more than one new defendant, within 5 business days of the service of the statement of claim on the last of the new defendants).

61 New apportionment under Division 5

- (1) The provisions of Division 5 apply again in respect of the original claim and the original claim defendants (with the new defendants included as defendants to the claim), subject to the following modifications and clarifications—
 - (a) agreement as to apportionment must be reached no later than 70 business days after service of the statement of claim for the new cross-claim on the last of the new defendants,
 - (b) agreement as to apportionment is only required to be reached by (and is only binding under clause 55 on) the original claim defendants that have elected to be subject to a new apportionment of liability on the original claim and the new defendants,
 - (c) a Contributions Assessor's determination as to apportionment under Division 5 is to be made within 80 business days after service of the statement of claim for the new cross-claim on the last of the new defendants,
 - (d) the Contributions Assessor's determination is to be a determination of the contribution that each defendant is liable to make, including (in addition to new defendants) all original claim defendants whether or not they have elected to be subject to a new apportionment of liability on the original claim, but is not binding under clause 55 on an original claim defendant unless the defendant elected to be subject to the new apportionment of liability,
 - (e) the Contributions Assessor's determination cannot increase any contribution already determined by a Contributions Assessor in respect of an original claim defendant.
- (2) A reference in this clause to the service of the statement of claim for the new cross-claim on the last of the new defendants is a reference to service of that statement of claim—
 - (a) if there is only one new defendant—on that defendant, or

- (b) if there is more than one new defendant—on the last of the new defendants to be served.

Note—

Clause 55 provides costs sanctions if a defendant disputes the contribution that the defendant is liable to make and the judgment of the Tribunal does not result in material improvement of the defendant's position.

Division 7 Multiple defendant claims—single claims manager

62 Application to cross-defendants

A reference in this Division to a defendant includes a reference to a cross-defendant.

63 Use of single claims manager

If there is more than one defendant to a plaintiff's claim and all of the defendants agree, the defendants may use the same claims manager (a **single claims manager** or **SCM**) to manage and negotiate the resolution of the plaintiff's claim on their behalf.

64 Role and functions of SCM

- (1) The role of the SCM is to manage and negotiate and seek to resolve the plaintiff's claim on behalf of all of the defendants and for that purpose the SCM has and may exercise on behalf of each defendant all the functions of a defendant.

Note—

The SCM's role includes the selection of expert evidence on behalf of all the defendants but this does not prevent a defendant from obtaining their own expert reports.

- (2) Anything done or omitted to be done by the SCM in purported exercise of the functions of the SCM is taken to have been done or omitted to be done by the relevant defendant or defendants.
- (3) A defendant who is the SCM for a claim is entitled to perform the role of the SCM in accordance with the defendant's usual arrangements for managing claims (which can include managing the claim themselves or an arrangement whereby particular kinds of claim are managed on behalf of the defendant by an insurer).
- (4) Each defendant is taken to authorise the SCM to settle the matter with the plaintiff, both informally and at any formal mediation.
- (5) A defendant may impose a monetary limit on the authority of the SCM to settle a claim on behalf of the defendant but must act reasonably in imposing that limit.
- (6) The imposition of a monetary limit on the authority of the SCM to settle a claim on behalf of a defendant is, for the purposes of the mediation of the claim, an aspect of participation in mediation, and the power of a mediator to issue a certificate to the effect that in the mediator's opinion a defendant did not participate in good faith in

the mediation extends to this aspect of the defendant's participation in mediation.

- (7) If a claim that is the subject of mediation is not settled before mediation is required to be completed, each defendant is taken to authorise the SCM to agree on its behalf on which issues are in dispute between the parties and on the facts that are relevant to those issues, unless in the case of any particular defendant the defendant has notified the SCM that the SCM is not authorised to do this on behalf of the defendant.

65 Limitations on SCM's role

- (1) The SCM does not have any role or functions in respect of apportionment of liability between defendants or any later dispute between the defendants as to apportionment of liability.
- (2) The role of the SCM does not limit or otherwise interfere with—
- (a) the responsibility of a defendant for preparing and serving the defendant's reply to the plaintiff's statement of particulars, or
 - (b) the right of a defendant to attend at and be represented at the mediation of a claim, or
 - (c) a defendant's responsibility to comply with a requirement by the mediator that a defendant be represented at mediation by a particular officer of the defendant, or
 - (d) a defendant's responsibility for questioning the plaintiff on issues relevant to contribution (if necessary) at the conclusion of a successful mediation.
- (3) The role of the SCM concludes—
- (a) if the plaintiff's claim is settled through mediation or otherwise before mediation of the claim is required to be completed—on final implementation of the settlement or on finalisation of any costs assessment in respect of the settlement, whichever is later, or
 - (b) if the plaintiff's claim is not settled before mediation of the claim is required to be completed—when the parties or the defendants reach agreement on which issues are in dispute between them or conclude their efforts to reach agreement.
- (4) The parties may agree to the use of an SCM beyond the time when the role of the SCM would otherwise conclude under this clause and any agreement has effect to continue the operation of this Part in respect of the SCM (including clause 66 with respect to the costs of the SCM) in accordance with that agreement.

66 Costs of the SCM

- (1) If the SCM is not one of the defendants, the costs of the SCM are payable as agreed between the defendants and the SCM.

- (2) If the SCM is one of the defendants, each of the other defendants is liable to reimburse the SCM in respect of the SCM's costs an amount that is the sum of the following amounts—
 - (a) the amount calculated by dividing half the amount of the SCM's costs by the number of defendants (including the SCM),
 - (b) a share of half the amount of the SCM's costs in the same proportion as the defendant's apportioned share of responsibility for the plaintiff's claim.
- (3) For the purposes of this clause, the **costs** of the SCM are the costs and expenses incurred by the SCM in the exercise of functions as the SCM, including—
 - (a) any costs of mediation or the remuneration of a Contributions Assessor borne by the SCM, and
 - (b) in relation to an SCM who is not one of the defendants, the remuneration of the SCM, and
 - (c) in relation to an SCM who is a defendant, the defendant's operational costs (including internal legal costs) and its external costs (including expert reports and external legal costs).
- (4) The Minister may by order published in the Gazette establish a scale of costs for use in determining the operational costs of an SCM that are allowable for the purposes of this clause.
- (5) The external legal costs of an SCM are subject to assessment under the [Legal Profession Uniform Law \(NSW\)](#) on the application of a defendant required under this clause to reimburse the SCM for any amount of those costs.

Division 8 Return of claims to the Tribunal

67 Non-urgent claims to be subject of first directions hearing

- (1) This clause applies to the following claims—
 - (a) a claim that has completed the claims resolution process without being settled,
 - (b) a claim that has ceased under Division 2 to be part of the claims resolution process pursuant to the agreement of the parties,
 - (c) a claim that the Tribunal has determined under Division 2 should be removed from the claims resolution process because of a failure to comply with a requirement of the claims resolution process,
 - (d) a claim that has ceased under clause 58(1) to be part of the claims resolution process.

- (2) The following provisions apply to claims to which this clause applies except a claim described in subclause (1)(c)—
- (a) the registrar must set the claim down for a first directions hearing before the Tribunal to take place within 10 business days for malignant claims or 20 business days for non-malignant claims,
 - (b) the plaintiff or, if the plaintiff's claim has been settled and cross-claims remain to be determined, the first defendant must propose in writing to the remaining parties what further steps (if any) need to be taken to prepare the matter for hearing, together with a timetable for completing those steps,
 - (c) if the parties agree on those steps and the timetable, written notice of the agreement must be provided to the registrar and the Tribunal must enter orders to give effect to that agreement.
- (3) The following provisions apply to all claims to which this clause applies—
- (a) the Tribunal may, subject to this subclause, make orders and give directions to the parties as to the steps to be taken to prepare the claim for hearing and for that purpose may order the amendment of the plaintiff's statement of claim,
 - (b) a defence is taken to have been filed to the claim and to any cross-claims, unless the Tribunal orders that a defence must be filed,
 - (c) the Tribunal may only order that a defence be filed in relation to matters that remain in dispute and only if the Tribunal is satisfied that it is necessary to do so to ensure that the outstanding issues in dispute are properly tried,
 - (d) the parties to the claim cannot administer interrogatories, order discovery or issue requests for particulars unless leave to do so is granted by the Tribunal, and the Tribunal may only grant that leave where it is satisfied that—
 - (i) the information sought by the party has not been provided as part of the required information exchange, and
 - (ii) the information relates to issues that remain in dispute, and
 - (iii) the order is necessary to ensure that the outstanding issues in dispute are properly tried,
 - (e) rules 15.12 and 15.13 of the *Uniform Civil Procedure Rules 2005* do not apply to the claim,
 - (f) the plaintiff may file an affidavit (but only in relation to issues that remain in dispute) and for that purpose may rely on the plaintiff's statement of particulars,
 - (g) the Tribunal cannot require the plaintiff to file an affidavit if the plaintiff elects to

rely on the plaintiff's statement of particulars served under Division 3 (or specified parts of that statement) as the plaintiff's affidavit (including any necessary changes made to that statement in the course of the required information exchange),

- (h) the Tribunal may not refer the claim or any aspect of the claim to mediation or neutral evaluation and may not refer a dispute as to apportionment concerning the claim to arbitration.

68 Procedures for urgent claims

If the Tribunal has determined that a claim is urgent on application by the claimant under Division 2, the statement of claim for the claim is, for the purposes of any provision of rules of court as to the serving of a defence, taken to have been served when the Tribunal made that determination.

Division 9 Costs

69 Costs penalties

- (1) In making an order as to the payment of costs in proceedings, the Tribunal must take into account any failure by a party to proceedings to comply with a provision of this Part.
- (2) In particular, the Tribunal must take into account any increase in the costs of the proceedings that is attributable to any failure by a party to proceedings and may order the party responsible for the failure to pay the costs of each other party to the dispute occasioned by the failure, assessed on an indemnity basis.
- (3) The Tribunal may take into account a certificate issued by a mediator to the effect that in the mediator's opinion a party to a claim referred for mediation did not participate in good faith in the mediation.

Part 4 Subpoenas

70 Interpretation and application

- (1) In this Part—

access order, in relation to a subpoena requiring production, means an order of the Tribunal granting access to specified documents or things produced pursuant to the subpoena (whether with or without conditions).

person named means, in relation to a subpoena, the person to whom the subpoena is addressed.

privileged document or thing, in relation to a subpoena, means—

- (a) a document or thing of which evidence could not be adduced in an action over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the *Evidence Act 1995*, or
- (b) if the party on whom the subpoena is served is a natural person—a document or thing the contents or production of which may tend to prove that the party—
 - (i) has committed an offence against or arising under an Australian law or a law of a foreign country, or
 - (ii) is liable to a civil penalty, within the meaning of the *Evidence Act 1995*, or
- (c) a document that relates to matters of state within the meaning of section 130 of the *Evidence Act 1995*, unless and until the Tribunal directs that it cease to be a privileged document.

requesting party for a subpoena means a person who is requesting, or who has requested, the issue of the subpoena.

return date for a subpoena means the date on which the subpoena is returnable.

- (2) The provisions of this Part apply to the exclusion of the equivalent provisions of rules of court.

Note—

This Part applies to all claims, not just claims that are subject to the claims resolution process under Part 3.

71 Conduct money

- (1) A subpoena must not require the person named to attend or produce any document or thing on any day on which the person's attendance is required unless an amount sufficient to meet the reasonable expenses of the person named of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day.
- (2) The amount mentioned in section 20(6) of the Act is to be, in respect of a person duly served with a subpoena in any proceedings, the amount which would be payable in respect of that person if the party issuing the subpoena were entitled to claim witness' expenses in respect of that person as costs in the proceedings.

72 Production by non-party

- (1) Where the person named in a subpoena for production of any document or thing is not a party to the proceedings, the subpoena must, unless the Tribunal otherwise orders, permit the person to produce the document or thing to the registrar not later than the day before the first date on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.

- (2) Where a document or thing is produced to the registrar pursuant to subclause (1), the registrar must—
 - (a) give a receipt to the person producing the document or thing, and
 - (b) produce the document or thing as the nature of the case requires or as the Tribunal may direct.
- (3) This clause does not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

73 Return of exhibits

- (1) Exhibits in any proceedings must be returned to the persons who produced them (whether on subpoena or otherwise) to the Tribunal or the registrar—
 - (a) if the Tribunal makes no order that the exhibits be retained—immediately after judgment is given or a final order made, or
 - (b) if the Tribunal makes an order that the exhibits be retained—at the expiration of the period of 30 days after judgment is given or a final order made or any other period specified in the order.
- (2) A person to whom exhibits may be returned under subclause (1) must obtain the return of, and give to the registrar a receipt for, the exhibits as soon as practicable, and the registrar is responsible for the safe custody of any exhibits in the registrar's keeping for a period only of 14 days after the first day on which the exhibits may be so returned.

74 Issue

- (1) On request by a party, the registrar must issue a subpoena to give evidence or a subpoena for production or a subpoena both to give evidence and for production.
- (2) Subclause (1) does not prevent the issue of a subpoena to give evidence and a subpoena for production to the same person in the same proceedings.
- (3) Subject to subclause (4), a party requesting the issue of a subpoena must produce the subpoena to the registrar in duplicate.
- (4) Where a party requests in any proceedings the issue of several subpoenas to give evidence in similar terms but addressed to different persons, the party need produce only one original, but that original must contain the name of each person to whom a subpoena is addressed.
- (5) The registrar is not required to place a copy of the subpoena on the Tribunal's file.
- (6) A subpoena for production may be made returnable on the day fixed for the hearing of the proceedings in which it is issued, or, with the leave of the Tribunal or the registrar,

on any other day.

- (7) While a claim is subject to the claims resolution process under Part 3, a subpoena for production of any document or thing—
 - (a) is to be made returnable on a day that is no later than 5 business days before the start of mediation on the claim under that Part, and
 - (b) must permit the person named in the subpoena (whether or not the person is a party) to produce the document or thing to the registrar, and
 - (c) does not require leave under subclause (6) if a copy of the subpoena is served at least 10 business days before the return date of the subpoena.

75 Notice to be given to other parties concerning subpoenas requiring production

- (1) The requesting party for any subpoena requiring production must serve each other party who has an address for service in the proceedings with a copy of the subpoena—
 - (a) if the return date of the subpoena is on a day that is 14 days or more after the subpoena is issued—within the period of 7 days after the subpoena is issued, or
 - (b) if the return date of the subpoena is on a day that is less than 14 days after the subpoena is issued—within 24 hours after the subpoena is issued.
- (2) The requesting party for a subpoena requiring production who fails to comply with subclause (1) must notify the Tribunal of that failure at the next date on which the subpoena is returnable.
- (3) The requesting party for a subpoena requiring production must notify each other party to the proceedings who has an address for service in the proceedings of any new return date for the subpoena fixed after the subpoena is first issued—
 - (a) if the return date of the subpoena is on a day that is 14 days or more after the new date is fixed—within the period of 7 days after the new date is fixed, or
 - (b) if the return date of the subpoena is on a day that is less than 14 days after the new date is fixed—within 24 hours after the new date is fixed.
- (4) The Tribunal or the registrar may make an order for costs against a requesting party for a subpoena requiring production if that party fails to comply with subclause (2) or (3), but only in respect of costs incurred by reason of that failure.
- (5) A requesting party for a subpoena requiring production need not comply with a requirement under subclause (1), (2) or (3) if the person named is excused from compliance with the subpoena by the requesting party under clause 83(2) before the time when the requesting party had to comply with that requirement.
- (6) Nothing in this clause affects the operation of clause 80.

76 Access to subpoenaed material

- (1) The Tribunal may make an access order in relation to a subpoena requiring production at the time the subpoena is issued or at any time after it is issued.
- (2) If an access order has effect in relation to a subpoena for production, a party or the party's barrister or solicitor may (subject to the terms of the order)—
 - (a) inspect documents or things produced in compliance with the subpoena, and
 - (b) take copies of any documents so inspected.

77 Proposed access orders

- (1) Unless the Tribunal orders otherwise, the requesting party for a subpoena requiring production must endorse a proposed access order on the subpoena.
- (2) Without limiting clause 76, the Tribunal may—
 - (a) endorse a proposed access order on a subpoena requiring production if the requesting party has not endorsed a proposed order, or
 - (b) endorse a proposed access order on a subpoena requiring production in different terms to a proposed order endorsed by the requesting party.
- (3) Unless the Tribunal orders otherwise, any proposed access order has effect as an access order immediately after the next return date for the subpoena if—
 - (a) documents or things are produced in compliance with the subpoena on or before that date, and
 - (b) no person appears before the registrar or Tribunal on the return date in opposition to the proposed order.
- (4) Without limiting subclause (3), the Tribunal may take into account a failure to comply with subclause (5) or (6) or clause 75(1), (2) or (3) in determining whether a proposed access order should have effect according to its tenor or whether an order is to be made to modify or revoke the proposed access order.
- (5) A party or a person named in a subpoena requiring production who proposes to object to the proposed access order on the return date for the subpoena must notify the requesting party of the objection—
 - (a) if the party or person is served with a copy of the subpoena on a day that is 14 days or more before the return date—within the period of 3 days after the party or person is served, or
 - (b) if the party or person is served with a copy of the subpoena on a day that is less than 14 days before the return date—within the period of 24 hours after the party

or person is served.

- (6) A requesting party who has received notice of an objection to a proposed access order must notify all of the other parties who have an address for service in the proceedings of the objection within 24 hours after receiving that notice.

78 Exercise of functions by registrar

The functions of the Tribunal under clauses 76 and 77 may, unless the Tribunal otherwise orders, be exercised by the registrar.

79 Time for service

- (1) A subpoena must be served on the person named within a reasonable time.
- (2) Without affecting the generality of subclause (1), where a subpoena requires attendance or production or both on a specified date, the subpoena may not be served on the person named later than 5 days before the date so specified unless the Tribunal or registrar otherwise orders.
- (3) Subject to subclause (4), service of a subpoena for production which requires production on a specified date, being a date not later than 21 days before the hearing of the proceedings in which the subpoena is issued, may be effected by sending a copy of the subpoena by pre-paid post addressed to the person named at that person's usual or last known residence or place of business.
- (4) Service pursuant to subclause (3) is not effective unless and until the subpoena is actually received by the person named.

80 Subpoena to medical expert

- (1) Where a subpoena requires a medical expert to attend in Sydney on a specified date for the purposes of giving evidence on medical matters, the subpoena may not be served on the expert later than 21 days before the date so specified unless the Tribunal otherwise orders.
- (2) A party may request the issue of a subpoena for production in the approved form requiring a medical expert to attend and produce medical records or clear sharp photocopies of them.
- (3) A subpoena requested under subclause (2) must not require the person named to attend or produce any document on any date specified unless the amount of \$28 is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that specified date.
- (4) Clause 71 does not apply to a subpoena requested under subclause (2).
- (5) Clause 72 applies to the photocopies as it applies to the records.

81 Setting aside

The Tribunal may, of its own motion or on the motion of any person having a sufficient interest, set aside a subpoena wholly or in part.

82 Expense and loss

Where a person named is not a party and, in consequence of service of the subpoena, reasonably incurs expense or loss substantially exceeding any sum paid under clause 71, the Tribunal may order that the party who requested the issue of the subpoena pay to the person named an amount in respect of the expense or loss.

83 Alteration to obligations

- (1) A party who has requested the issue of a subpoena to give evidence may, by written or oral notice to the person named, alter the day specified in the subpoena for attendance to a day which is—
 - (a) later than the day specified in the subpoena and the day, if any, as last altered pursuant to this subclause, and
 - (b) the day of the hearing of the action.
- (2) Where the person named in any subpoena has not been called to give evidence, or produce documents, before the Tribunal in compliance with the subpoena, the party who requested the issue of the subpoena may, by written or oral notice to the person named, excuse that person from compliance with the subpoena.

84 Special powers of Tribunal

- (1) The Tribunal may, by order, dispense with any requirement of this Part if satisfied that it is appropriate to do so in the circumstances of the case.
- (2) The Tribunal may, by order, extend or abridge any time fixed under this Part.
- (3) The Tribunal may extend time under this clause, either before or after the time expires, and may do so after the time expires even if an application for extension is made after the time expires.

85 Application of Part 3.10 of Evidence Act 1995

Nothing in this Part compels a person on whom a subpoena is served to produce a privileged document or thing.

Part 5 Offers of compromise

86 Part displaces rules

This Part displaces any provision of rules of court with respect to the acceptance or

rejection of an offer of compromise.

Note—

This Part applies to all claims, not just claims that are subject to the claims resolution process under Part 3.

87 Definitions

In this Part—

defendant includes cross-defendant.

final deadline for an offer means the time at which the Tribunal begins to give its decision or its reasons for decision, whichever is the earlier, on a judgment (except an interlocutory judgment).

offer means an offer of compromise referred to in clause 88.

period for acceptance for an offer means the period from when the offer is made until—

- (a) the expiration of the time limited by the offer or, if no time is limited, the expiration of 28 days after the offer is made, or
- (b) the final deadline for offers in respect of the claim to which the offer relates, whichever first occurs.

plaintiff includes a cross-claimant.

88 Making of offer

- (1) In any proceedings, any party may, by notice in writing, make an offer to any other party to compromise any claim in the proceedings, either in whole or in part, on specified terms.

Note—

This Part extends to offers between a cross-claimant and cross-defendant. An offer does not have to be made to all the parties to proceedings.

- (2) An offer must be exclusive of costs, except where it states that it is a verdict for the defendant and that the parties are to bear their own costs.
- (3) A notice of offer—
 - (a) must bear a statement to the effect that the offer is made in accordance with this clause, and
 - (b) if the party making the offer has made or been ordered to make an interim payment to the other party, must state whether or not the offer is in addition to the payment so made or ordered.
- (4) An offer made by the plaintiff or the defendant to the other to compromise a claim

(other than a claim removed from the claims resolution process under clause 20) may be expressed to be limited as to the time it is open to be accepted but the time expressed cannot be less than—

- (a) 28 days after the offer is made if the offer is made before the required information exchange under Part 3, or
 - (b) 14 days after the offer is made if the offer is made after the required information exchange under Part 3 but before mediation of the claim under the claims resolution process has been concluded, or
 - (c) 7 days after the offer is made if the offer is made after mediation of the claim under the claims resolution process has been concluded.
- (5) An offer made by the plaintiff or the defendant to the other to compromise any claim removed from the claims resolution process under clause 20 may be expressed to be limited as to the time it is open to be accepted but the time expressed cannot be less than—
- (a) 14 days after the offer is made, unless paragraph (b) applies, or
 - (b) if the offer is made after an Issues and Listing Conference has been held in respect of the claim, 7 days after the offer is made.
- (6) Unless the notice of offer otherwise provides, an offer providing for the payment of money, or the doing of any other act, is taken to provide for the payment of that money, or the doing of that act, within 28 days after acceptance of the offer.
- (7) An offer is taken to have been made without prejudice, unless the notice of offer otherwise provides.
- (8) A party may make more than one offer in relation to the same claim.
- (9) Unless the Tribunal orders otherwise, an offer may not be withdrawn during the period of acceptance for the offer.
- (10) A notice of offer that purports to exclude, modify or restrict the operation of clauses 89 and 90 is of no effect for the purposes of this Part.

89 Where offer not accepted and judgment no less favourable to plaintiff

- (1) This clause applies if the offer concerned is made by the plaintiff, but not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim concerned no less favourable to the plaintiff than the terms of the offer.
- (2) Unless the Tribunal orders otherwise in an exceptional case and for the avoidance of substantial injustice, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim—

- (a) assessed on a party and party basis up to the time from which those costs are to be assessed on an indemnity basis under paragraph (b), and
- (b) assessed on an indemnity basis—
 - (i) if the offer was made before the first day of the trial, as from the beginning of the day following the day on which the offer was made, and
 - (ii) if the offer was made on or after the first day of the trial, as from 11 am on the day following the day on which the offer was made.
- (3) If the Tribunal in an exceptional case and for the avoidance of substantial injustice otherwise orders as referred to in subclause (2), the Tribunal must give its reasons for so ordering.

90 Where offer not accepted and judgment as or less favourable to plaintiff

- (1) This clause applies if the offer concerned is made by the defendant, but not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim concerned as favourable to the plaintiff, or less favourable to the plaintiff, than the terms of the offer.
- (2) Unless the Tribunal orders otherwise in an exceptional case and for the avoidance of substantial injustice—
 - (a) the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim, to be assessed on a party and party basis, up to the time from which the defendant becomes entitled to costs under paragraph (b), and
 - (b) the defendant is entitled to an order against the plaintiff for the defendant's costs in respect of the claim, assessed on an indemnity basis—
 - (i) if the offer was made before the first day of the trial, as from the beginning of the day following the day on which the offer was made, and
 - (ii) if the offer was made on or after the first day of the trial, as from 11 am on the day following the day on which the offer was made.
- (3) If the Tribunal in an exceptional case and for the avoidance of substantial injustice otherwise orders as referred to in subclause (2), the Tribunal must give its reasons for so ordering.

91 Costs with respect to interest

- (1) If a plaintiff obtains an order or judgment for the payment of damages and—
 - (a) the amount payable under the order or for which judgment is given includes interest or damages in the nature of interest, or

(b) the Tribunal, by a separate order, awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in clause 89 or 90, the Tribunal must disregard so much of the interest, or damages in the nature of interest, as relates to the period after the day on which the offer was made.

(2) For the purpose only of this clause, the Tribunal may be informed of the fact that the offer was made, and of the date on which it was made, but must not be informed of its terms.

92 Acceptance of offer

- (1) A party may accept an offer by serving written notice of acceptance on the party making the offer at any time during the period of acceptance for the offer.
- (2) An offer may be accepted even if a further offer is made during the period of acceptance for the first offer.
- (3) If an offer is accepted in accordance with this clause, any party to the compromise may apply for judgment to be entered accordingly.

93 Withdrawal of acceptance

- (1) A party who accepts an offer may withdraw the acceptance in either of the following circumstances by serving written notice of withdrawal on the party making the offer—
 - (a) if the offer provides for payment of money, or the doing of any other act, and the sum is not paid to the party who accepts the offer or into the Tribunal, or the act is not done, within 28 days after acceptance of the offer or within any other time as the offer provides,
 - (b) if the Tribunal grants the party leave to withdraw the acceptance.
- (2) If acceptance of an offer is withdrawn—
 - (a) except as provided by paragraphs (b) and (c), all steps in the proceedings that have been taken as a consequence of the offer having been accepted cease to have effect, and
 - (b) the Tribunal may give directions—
 - (i) to restore the parties as nearly as may be to their positions at the time of the acceptance, and
 - (ii) to give effect to any steps in the proceedings that have been taken as a consequence of the offer having been accepted, and

(iii) to provide for the further conduct of the proceedings,

and may do so either after the offer is withdrawn or when granting leave to withdraw the offer, and

(c) if the claim was subject to the claims resolution process when the offer was accepted, the claim is once again subject to the claims resolution process at the stage and with any steps having been taken as part of that process as was the situation immediately before the offer was accepted.

94 Failure to comply with accepted offer

- (1) If the plaintiff, being a party to an accepted offer, fails to comply with the terms of the offer, the defendant is entitled to either of the following as the defendant elects, unless the Tribunal orders otherwise—
 - (a) any judgment or order as is appropriate to give effect to the terms of the accepted offer,
 - (b) an order that the proceedings be dismissed, and to judgment accordingly.
- (2) If the defendant, being a party to an accepted offer, fails to comply with the terms of the offer, the plaintiff is entitled to either of the following as the plaintiff elects, unless the Tribunal orders otherwise—
 - (a) any judgment or order as is appropriate to give effect to the terms of the accepted offer,
 - (b) an order that the defence be struck out, and to judgment accordingly.
- (3) If a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceedings has made a cross-claim that is not the subject of the accepted offer, the Tribunal may make an order or give judgment under this clause and may make any order as to the further conduct of proceedings on the cross-claim as it thinks fit.

95 Disclosure of offer to Tribunal or arbitrator

- (1) No statement of the fact that an offer has been made may be contained in any pleading or affidavit.
- (2) If an offer is not accepted, no communication with respect to the offer may be made to the Tribunal at the trial or, as the case may require, to the arbitrator.
- (3) Despite subclause (2), an offer may be disclosed to the Tribunal or, as the case may require, to the arbitrator—
 - (a) if a notice of offer provides that the offer is not made without prejudice, or

- (b) to the extent necessary to enable the offer to be taken into account for the purpose of determining an amount of interest up to judgment, or
- (c) after all questions of liability and relief have been determined, to the extent necessary to determine questions as to costs.

96 Offer to contribute

- (1) If in any proceedings—
 - (a) one party (the **first party**) stands to be held liable to another party (the **second party**) to contribute towards any damages which may be recovered against the second party in the proceedings, and
 - (b) the first party, at any time after entering an appearance, makes an offer to the second party to contribute to a specified extent to the damages, and
 - (c) the offer is made without prejudice to the first party's defence,the offer must not be brought to the attention of the Tribunal or any arbitrator until all questions of liability or amount of damages have been decided.
- (2) In subclause (1), **damages** includes any interest up to judgment claimed on any damages.

Part 6 Miscellaneous

97 Legal practitioners to provide information about claims

- (1) This clause applies to a claim in respect of an asbestos-related condition (within the meaning of Part 3) settled or determined on or after 1 July 2005.
- (2) For the purposes of section 321 of the Act, a legal practitioner who acts for a party to a claim to which this clause applies that is settled or determined by judgment must—
 - (a) within 30 business days after the claim is finalised, provide to the registrar the required information concerning the claim, and
 - (b) within 30 business days after any appeal in respect of the claim is finalised, provide to the registrar any revision of the required information provided under paragraph (a) made necessary by changes resulting from the appeal.
- (3) The **required information** is the information required to complete Form 3 in Schedule 2. The required information and any revision of the required information must be provided using that Form.
- (4) A claim is **finalised**—
 - (a) when the claim is settled or determined, unless the claim is settled or determined

on the basis that costs are to be agreed or assessed, or

(b) if the claim is settled or determined on the basis that costs are to be agreed or assessed—when costs have been agreed or assessed.

(5) If a party's costs are assessed after the claim is finalised and the assessment results in the information provided under subclause (2) by a legal practitioner acting for the party being incorrect, the legal practitioner must, within 30 business days after the assessment, provide to the registrar any necessary revision of the required information.

98 Costs assessment

The provisions of the *Legal Profession Uniform Law Application Act 2014* are modified in their application to the assessment of costs in respect of a claim as follows—

(a) a reference to the Manager, Costs Assessment, is to be read as a reference to the registrar of the Tribunal,

(b) a reference to the Chief Justice of New South Wales is to be read as a reference to the President of the Tribunal.

99 Percentage of interest etc payable to Treasurer

The registrar must deduct 2.5% of any amount received by way of interest or dividends on funds that are paid to the Tribunal and invested, in accordance with the *Supreme Court Rules 1970* (as applied by the *Dust Diseases Tribunal Rules*), and must pay any amount so deducted to the Treasurer for payment into the Consolidated Fund.

100 Repeal and savings

(1) The *Dust Diseases Tribunal Regulation 2013* is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under the repealed Regulation continues to have effect under this Regulation.

(3) A provision of this Regulation extends to a claim that is pending immediately before the commencement of this Regulation, except as otherwise provided by this clause.

(4) Part 3 of this Regulation does not extend to a claim that is pending immediately before the commencement of this Regulation and Part 4 of the repealed Regulation, as in force immediately before 1 September 2019, continues to apply to such a claim.

(5) Subclause (4) ceases to have effect on 1 March 2020. However, if on 1 March 2020 any of the following processes have commenced under the provisions of Part 4 of the repealed Regulation and have not concluded, that Part continues to apply to that process until its conclusion—

- (a) a mediation,
- (b) an apportionment process (within the meaning of clause 18(3) of this Regulation).
- (6) Clauses 3, 4 and 6 of Schedule 2 to the repealed Regulation, as in force immediately before 1 September 2019, continue to apply despite the repeal of the repealed Regulation.
- (7) In this clause, **repealed Regulation** means the [Dust Diseases Tribunal Regulation 2013](#).

Schedule 1 Fees

(Clause 4)

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Filing an initiating process	\$214	\$428
2	Filing a cross-claim	\$214	\$428
3	First directions hearing	\$854	\$1,708
4	Filing a notice of motion	\$221	\$442
5	Opening or keeping open the registry or part of the registry—		
	(a) on a Saturday, Sunday or public holiday	\$758	\$1,516
	(b) on any other day—		
	(i) before 8.30 am or after 4.30 pm	\$758	\$1,516
	(ii) between 8.30 and 9 am or 4 and 4.30 pm	\$79	\$158
6	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 7, 10 and 15)—		
	(a) for the first 20 pages	\$13	—
	(b) for each 10 pages (or part of 10 pages) after the first 20 pages	\$7	—
7	Furnishing a copy of the written opinion or reasons for opinion of any member of the Tribunal—		
	(a) for a printed copy	\$74	—

	(b) for any other kind of copy	\$46	—
	Note—		
	A party to proceedings before the Tribunal is entitled to 1 copy of the opinion or reasons for opinion in relation to the proceedings without charge.		
8	Furnishing 1 or more sealed or certified copies of a judgment or order of the Tribunal	\$74	—
9	Supplying a duplicate recording of sound-recorded evidence, for each disc	\$56	—
10	Supplying a copy of a transcript of any proceedings—		
	(a) for each page, where the matter being transcribed is less than 3 months old—		
	(i) for up to 8 pages	\$91	—
	(ii) for each page over 8 pages	\$11	—
	(b) for each page, where the matter being transcribed is 3 or more months old—		
	(i) for up to 8 pages	\$110	—
	(ii) for each page over 8 pages	\$13	—
	Note—		
	A person who is supplied with a copy of a transcript of any proceedings of the Tribunal by a third party provider (not being the Tribunal or the Department of Communities and Justice's Reporting Services Branch) may be liable to pay a fee stipulated by that provider for that service. A fee stipulated by a third party provider is not subject to this item.		
11	Issuing a subpoena for production	\$86	\$172
12	Issuing a subpoena to give evidence	\$42	\$84
13	Issuing a subpoena for production and to give evidence	\$86	\$172
14	Receipt by the registrar of a document or thing produced in compliance with a notice to produce under Part 34 of the <i>Uniform Civil Procedure Rules 2005</i>	\$86	\$172

15	Retrieving and providing access to, but not furnishing a copy of, any file or box of files in respect of proceedings before the Tribunal, where the file or box of files is retrieved from an off-site storage facility—		
	(a) standard retrieval request (for each file or box of files)	\$84	—
	(b) non-standard retrieval request (including an urgent retrieval request, a high or after hours priority retrieval request or a retrieval request for delivery to or from a regional location outside the Sydney metropolitan area)	Such additional fee incurred by the Tribunal	—
16	Requesting production to the court of documents held by another court	\$63	\$126
17	Providing any service for which a fee is not otherwise provided for in this Schedule Note—	\$45	\$90
	This fee is chargeable only with the approval of the registrar.		

Schedule 2 Forms

Form 1 Plaintiff's statement of particulars

(Clause 23)

Instructions for completing this form

You must complete Parts 1 to 4, 6, 7 and 9 of this form. Part 5 must also be completed unless the condition in respect of which you are claiming is mesothelioma.

You must create a covering index which lists each Part you have completed.

Where the form indicates that material must be attached to the statement of particulars, you should number each attachment sequentially and identify the number of that attachment in the relevant answer. You must also list the attachments in the covering index.

If you do not know the answer to a particular question you should state this in your answer.

You have a continuing obligation to provide information. In the event that you remember additional facts or information, you should update your answers.

It is not necessary for you to obtain and provide material with this form (such as documentary evidence and reports) on which you would generally rely in proceedings before the Tribunal, except where the form indicates that specific material is required to be attached.

By providing comprehensive answers to the questions in this form, the defendant will be able to make an assessment of the answers provided and can then make a decision as to whether further material (such as documentary evidence or an expert report) is required to assess the claim. Where further material is required by a defendant, you should provide that further material as soon as practicable.

If you already have additional material such as documentary evidence or expert reports then you may wish to provide that material now, or indicate that you have that material.

Where specific material is required to be attached to this form, but you do not have the material requested available to you at the time you complete the form, you must indicate that you will forward this material to the defendant/s when it becomes available to you. You must provide an indication of when you expect this further material to be available.

Your solicitor may complete this form on your behalf, however, you must still swear or affirm the statutory declaration at the end

of this form.

If your claim is made under the *Compensation to Relatives Act 1897*, you should complete the Exposure sections in respect of the person as a result of whose death you are claiming and Part 8 of this form.

Part 1 Claimant's personal details

Family name—

Given names—

Title—

Date of birth—

Place of birth—

Gender—

Have you been known by any other name? If so, provide in full the name(s) by which you were known—

Solicitor—

Solicitor's address—

Solicitor's phone and fax number—

Please complete the details below if you are not represented by a solicitor—

Home address of claimant—

Postal address (if different to home address)—

Home and mobile telephone numbers—

Part 2 Medical evidence

Medical condition

2.1 What asbestos-related condition have you been diagnosed with (***your condition***)?

2.2 When was your condition diagnosed?

2.3 What is the name of the medical practitioner who diagnosed your condition?

2.4 Attach a short report from the medical practitioner who diagnosed your condition and any medical evidence which relates to your current condition (including X-rays, pathology reports, ultrasounds etc) on which you intend to rely and which is currently available to you.

2.5 What disabilities has your condition resulted in?

2.6 What treatments have been prescribed for you and what operations have you had for your condition? Describe in detail or attach any reports on which you intend to rely in proceedings that you have obtained to date which set out this information.

2.7 Do you have any other continuing medical conditions? If so, describe in detail.

2.8 Do you have any disabilities that have not arisen from your condition?

Treating medical practitioners

2.9 Provide the following details for all medical practitioners or other health care providers (including all medical experts, surgeons and rehabilitation providers) who have treated you for your condition—

- Name of practitioner

- Name of practice

- Address

- Telephone number
- Period of consultation
- Treatment provided

Other medical practitioners or health care providers

2.10 Provide details of all other medical practitioners or health care providers who have consulted you for any condition in the last five years—

- Name of provider
- Name of practice
- Occupation
- Address
- Telephone number
- Period of consultation

2.11 Do you authorise the persons against whom you bring this claim to access your medical records? If so, complete the following authority as a separate document and attach it to this statement—

Medical authority

I, [Name], authorise any medical practitioner or other health care professional who has treated or examined me to give [*Insert all defendants' names*], and any other person who is joined as a party to the proceedings commenced by me, access to a copy of my medical records to assist in the proof and settlement of my claim. A copy of this authority can be acted upon as if it were the original.

Signature—

Date—

2.12 Do you authorise a medical practitioner nominated by the defendant to access your pathological and histopathological material for the purpose of confirming your diagnosis? If so, complete the following authority as a separate document and attach it to this statement—

Authority to access pathology results

I, [Name], authorise a pathologist nominated by each defendant and cross-defendant to the proceedings commenced by me to be given access to my pathological and histopathological material for the purpose of confirming my diagnosis.

Signature—

Date—

Part 3 Summary of work and exposure history

3.1 Complete the following details relating to all employment and work, including periods where you were self-employed or employed as a contractor. Include ALL interstate and overseas employment details. Include additional rows in the Table as required.

Start Date	End Date	Name and address of employer (including any other names by which the employer may have been known)	Employer's industry	Occupation, a brief description of duties and status (eg full time, part-time, casual)	Exposure to asbestos (Yes or No)
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3.2 Complete the following details relating to all non-work related exposure (including interstate and overseas exposures). Include additional rows in the Table as required.

Start date of exposure period	End date of exposure period	Address where exposure occurred	Brief description of activity you were engaged in (eg home renovation, washing clothes)
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Part 4 Detailed exposure history

Complete an exposure history for each separate period of exposure listed in Part 3 (including work and non-work related exposures).

You must answer all of the general questions. You must also answer the specific questions relevant to your circumstances.

4A General questions (To be answered for each exposure period)

- 4.1 How were you exposed to asbestos?
- 4.2 What were you doing at the time you were exposed to asbestos?
- 4.3 What is the address of the premises where exposure occurred, if different from that specified in Part 3? If the address is unknown, please describe the premises and their general location.
- 4.4 Do you know who owned the premises where exposure occurred?
- 4.5 How often were you exposed to asbestos during the period of exposure (including the number of occasions and/or the frequency with which this occurred)?
- 4.6 Describe the level or intensity of exposure as you perceived it (including whether you consider the level or intensity was low, medium or high). Where there are multiple premises you should do this for each location, unless there is no material difference in the level or intensity of exposure at the different sites (for example, where as a contractor you attended multiple sites and the level or intensity of exposure was about the same at a number of the sites). You should indicate whether the exposure changed over time and if so, describe how it changed.
- 4.7 If you have had more than one exposure period, estimate (if you can reliably do so) as a percentage the proportion that this period of exposure constitutes of your total exposure?
- 4.8 What asbestos products were you exposed to, including the product trade-name if known? If you do not know the trade-name of the product, describe the product.
- 4.9 Do you know who was the manufacturer and/or supplier of those asbestos products?

4.10 Do you know where the products were purchased from?

4.11 If there was more than one product during this period, estimate (if you can reliably do so) as a percentage the relative exposure to each product.

4.12 Do you recall any identifying features or markings on those asbestos products?

4B Specific questions—to be completed for each exposure which is work-related

4.13 Did your exposure result from working directly with asbestos or from working in the vicinity of others who were working with asbestos?

4.14 What specific activities or duties were you engaged in at the time you were exposed to asbestos?

4.15 How often did you engage in these duties or activities?

4.16 If your exposure occurred whilst you were working in the vicinity of others who were using asbestos, what activities were the others who were working with asbestos engaged in?

4.17 Were there any persons other than your employer who directed or controlled the work at those premises such as the owner or occupier of the premises or a contractor?

4.18 Were you provided with any relevant protective gear? If so, describe the gear you were provided with.

4.19 Were you required to wear protective gear whilst exposed to asbestos?

4.20 Did you comply with this requirement? If not, why not?

4.21 Did your employer advise you of any safety measures to protect you from being exposed to asbestos? If so, describe these measures.

4.22 Did the employer or occupier take any precautions to minimise the generation or dissemination of dust?

4.23 Do you know whether any companies other than your employer—
(a) specified the use of the asbestos products to which you were exposed?

(b) designed or installed plant or equipment containing the asbestos to which you were exposed?

4.24 Were you using or working on particular plant or equipment which contained asbestos when the exposure to asbestos occurred? Please identify the plant or equipment and state what you were doing?

4.25 Did any products you handled, or the machinery you used, have any instructions or guidance as to safe usage to avoid exposure to asbestos?

4.26 What was the date of your last exposure to asbestos, if this was not your last date of employment?

Attach documents you currently hold evidencing your employment with this employer (eg tax returns, references etc).

4C Specific questions—exposure while self-employed

4.27 If you were engaged as an independent contractor, identify the principal contractor.

4.28 Do you know who controlled the work which you were undertaking?

4.29 Did you have any insurance, including workers compensation insurance?

4.30 Did you employ any other people?

4D Specific questions—secondary exposure as a result of the work of another member of your family or household

4.31 Were you exposed to asbestos as a result of the work of another member of your family or household?

4.32 What was the name of the other person?

4.33 What was your relationship with that other person?

In addition to providing the above information, you must complete Part 4A and/or Part 4B in respect of the member of your family or household through whose work you were exposed (in addition to completing Part 4A in relation to your own exposure). In completing these Parts you should construe a reference to you as a reference to the person who it is alleged was exposed during the course of employment and/or self-employment. You are only required to provide detailed information about their exposure if you are able to do so.

Part 5 Smoking history

You do not need to complete this Part of the form if the condition from which you suffer is mesothelioma.

5.1 Do you currently or did you ever smoke? If so, provide the following information—

- Over what period have you smoked?
- What brand(s) of cigarettes or other tobacco products have you smoked?
- Provide the following information for each brand of cigarette or other tobacco product you have smoked—
 - How often have you smoked?
 - How many cigarettes or other tobacco products have you smoked a day?
 - Has your smoking pattern changed over time? If so, how?
 - Have you sustained any illnesses as a result of smoking?
 - Have your illnesses been treated by a medical practitioner? If so, what is the name of the medical practitioner?

Part 6 Compensation

In completing this Part you should not obtain medical or occupational therapist's reports to support your answers. The defendant may subsequently indicate that they require such material to assess your claim. You may also need to obtain these reports for proceedings in the Tribunal.

6.1 If you are claiming compensation for any of the damages categories listed below, provide brief particulars of your claim. You may be requested by the defendant to provide further detailed particulars, including setting out in detail the facts, circumstances and evidence on which you intend to rely. The information provided should include the details listed below each category—

- General damages (pain and suffering, loss of expectation of life)
 - Include details on your prognosis
- Past economic loss and future loss of earning capacity including—
 - Per weekly loss alleged
 - Period of time over which the loss has occurred, or will continue to occur
 - The personal expenditure of the plaintiff if the plaintiff had not been injured (if the claim relates to mesothelioma or lung cancer)
 - Attach any tax returns, wage slips invoices or other documentation that may be relevant to your claim

- Cost of future medical care
- Out of pocket expenses
- Personal care costs
 - Specify the nature of the care required
 - Include details of the provider, including their relationship to you
 - Specify how often the care is to be provided
- Damages for services provided to third parties
 - Specify the nature of the services provided
 - Identify to whom the services are to be provided
 - The nature of the recipient's relationship to you
 - How long you have provided the services
 - The frequency with which you have provided these services
- Home modifications

6.2 If you are claiming economic loss, are you receiving any Government benefit? If yes, please specify the benefit and the date on which that benefit commenced.

6.3 Have you received any compensation from a workers compensation or other insurer in respect of your condition? If yes, please specify the benefit paid and the date received.

6.4 Although you are not required at this stage to provide a notice of past benefits from the Health Insurance Commission, have you requested a notice? If you have received this information you should attach it.

Part 7 Dust Diseases Board claims

7.1 Have you previously or are you currently making a claim in relation to your condition with the Dust Diseases Board? If so, provide the following information—

- Date of claim
- Was the claim accepted?
- If yes, what benefit was awarded?

Part 8 Compensation to Relatives

8.1 If you are claiming compensation under the [Compensation to Relatives Act 1897](#), provide brief particulars of this claim. You may be requested by the defendant to provide further detailed particulars, including setting out in detail the facts, circumstances and evidence on which you intend to rely. The information provided should include the details listed below—

- Details of the person or person on whose behalf the damages are sought (name, address, relationship to deceased, marital status)
- Details of dependency on deceased
- Details of damages claimed by dependents

Part 9 Statutory declaration

I, [Name], of [Address], solemnly declare that the answer to each and every question on this form and the particulars contained therein or attached hereto, are true. I make this declaration in accordance with the [Oaths Act 1900](#), and subject to the punishment by law provided for the making of any wilfully false statement in any such declaration.

Claimant's signature—

Date—

Declared before me—

Title—

Signature—

Date—

Form 2 Defendant's reply

(Clause 26)

Instructions for completing this form

All defendants must complete Parts 1, 2, 7, 9 and 11 of this form. Part 8 of the form only needs to be completed where there is more than one defendant. Part 10 of the form only needs to be completed if compensation under the [Compensation to Relatives Act 1897](#) has been claimed.

You must complete and submit the remaining Parts of the form which are relevant to the claim made against you.

You must create a covering index which lists the Parts of the form which you have completed and which identifies those Parts of the form which have not been completed.

Where the form indicates that material must be attached to the Reply, you should number each attachment sequentially and identify the number of that attachment in the relevant answer. You must also list the attachments in the covering index.

Where you require further information from the claimant in order to answer a particular question, you must state this in your answer and specify what information you require in order to answer the question.

You have a continuing obligation to provide information and update your answers as new information becomes available.

If you answer a question with "Do not know" and you are undertaking further investigations you must clearly indicate this and state when you expect those investigations to be complete. Once complete you must update your answer and the information in the form as soon as practicable.

You are not required to obtain and provide material (such as expert reports) with this form, except where the form indicates that specific material is required to be attached.

By providing comprehensive answers to the questions in this form, the plaintiff and other defendants will be able to make an assessment of the answers provided and will then be able to make a decision as to whether further material (such as documentary evidence or an expert report) is required to assess your defence. Where further material is required by a claimant or other defendant, you must provide that further material as soon as practicable.

Where this form requires you to summarise the type of evidence on which you intend to rely to support your position, you must describe that evidence in sufficient detail for the plaintiff and other defendants to fully understand the basis of your position. A response that refers to material in general terms which may be obtained through other processes (such as discovery or interrogatories) is not considered adequate.

The term "evidence" in this form includes statements of witnesses, documents over which you have custody or control, documents you have obtained from third parties, verified answers to interrogatories provided in other claims and expert reports.

In some cases the form requires you to attach evidence. Where the form indicates that evidence must be attached you are only required to provide evidence that is available to you at the time you complete this form. You are, however, required to provide details of all evidence that you are aware of or that is reasonably discoverable by you. You should indicate if you intend on obtaining further evidence (such as an expert report). If so, you should specify when you expect to receive the further evidence.

If you are the insurer for a person against whom the claim is made you must complete this form and construe a reference to you as a reference to the insured. If you do not know the answer to any of the questions because you have been unable to obtain this information specify this and indicate whether you expect that further information will become available to you, and if so when. You should update your answer at that time.

Part 1 Defendant details

Name of defendant—

ABN/ACN—

Postal address—

Address for service—

Email address—

Phone—

Fax—

Name of claimant—

Date of service of the statement of particulars on you—

Were proceedings commenced against you directly by the claimant or are you a cross-defendant?

Have you made any cross-claims in this matter? If yes, list those cross-defendants.

Do you need to inspect particular premises or a place where the exposure is alleged to have occurred in order to respond to the claimant's claim? If yes, please specify those premises.

Note—

Where a request to inspect premises or a place is made, you still must answer all of the questions in this reply.

Part 2 Diagnosis of the claimant's injury

2.1 Do you admit that the claimant has the alleged condition?

2.2 Do you accept the medical evidence on the claimant's diagnosis that the claimant has provided with the claimant's statement of particulars? If you only accept some of the evidence provided by the claimant, specify those parts which you accept.

2.3 Do you admit that the alleged condition was caused by exposure to asbestos?

2.4 Do you admit that the claimant has the disabilities claimed? If you only admit that the claimant has some of the disabilities claimed, please specify which disabilities you admit the claimant suffers from.

2.5 If you did not answer yes to questions 2.1 to 2.4, do you have any medical evidence to support your position? Attach the evidence. If you do not have evidence to support your position but you have arranged for medical evidence to be obtained you should indicate when you expect to receive this evidence and provide that evidence as soon as it is received.

Part 3 Response to claim relating to employment

To be completed by a defendant who is alleged to have employed the claimant.

Note—

If the claimant alleges that the claimant's condition was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was employed by you, you should also complete this Part.

In so doing you should construe a reference to the claimant as a reference to the person who it is alleged you employed except in relation to questions 3.7 to 3.13 where you should answer each question with respect to both the claimant and the person you employed.

3.1 Do you admit that you employed the claimant, as alleged?

Yes No Do not know

If yes, proceed to question 3.2.

If no, set out the basis on which you do not admit that you employed the claimant. What evidence do you have and what evidence do you intend to obtain to contradict the claimant's or other defendant's version of events? If you know who employed the claimant during the period, identify that person. Any evidence which

you have at present should be attached to this form.

If you do not know, do you have any evidence to contradict the claimant's allegation? Any evidence which you have at present should be attached to this form.

3.2 Did you occupy or control the premises at which the claimant alleges he or she was exposed to asbestos?

Yes No Do not know

If you answered yes to this question you must also complete Part 4 of this form.

If you do not know or do not admit the allegation, on what basis do you assert that you do not know or do not admit to the allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.3 Do you admit that the time period during which the claimant is alleged to have been employed by you is correct?

Yes No Do not know

If yes, proceed to question 3.4.

If no—

(a) do you admit that you employed the claimant in another period and, if so, what period?

(b) what evidence do you have to support this admission?

If you do not know or do not admit you employed the claimant in any period, on what basis do you assert that you do not know or do not admit that you employed the claimant? Do you have any evidence to contradict the claimant's allegation?

Attach all relevant evidence.

3.4 Do you admit that the claimant was exposed to asbestos in the course of or arising out of employment by you?

Yes No Do not know

If yes, proceed to question 3.5.

If no, on what basis do you dispute the claimant's allegation that he or she was exposed to asbestos arising out of or in the course of employment by you. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.5 Do you agree with the claimant's description of—

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity and duration of exposure;

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 3.6.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question to which you answered no. Summarise the type of evidence on which

you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.6 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other personal injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 3.7 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

3.7 Do you admit that you owed a common law duty of care to the claimant as an employer during the period of alleged exposure?

Yes No

If yes, proceed to question 3.8.

If no, on what basis do you claim that you did not have a duty?

3.8 Regardless of whether or not you admit that you had a duty, did you discharge the common law duty to the standard of a reasonable person, for example, by having a safe system of work, by providing instructions on the safe use and handling of asbestos or by taking reasonable precautions?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 3.9.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the evidence on which you intend to rely to support your position.

3.9 Do you admit that you owed a statutory duty to the claimant as an employer or otherwise during the alleged period of exposure?

Yes No Do not know

If yes, proceed to question 3.10.

If no or do not know, on what basis do you claim that you did not have a duty?

3.10 Do you admit that you failed to discharge the statutory duty said to apply to you?

Yes No Do not know

If yes, proceed to question 3.11.

If no, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.11 Do you admit that your breach of duty (whether common law or statutory) is a cause of the alleged asbestos

related injury?

Yes No Do not know

If yes, proceed to question 3.12.

If no, set out the basis of your argument as to why you do not admit the breach caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.12 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty (whether common law or statutory) or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 3.13.

If no, set out the basis of your argument as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.13 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 4.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely.

Part 4 Response to claim as an occupier

To be completed by a defendant who is alleged to have occupied premises at which the claimant was alleged to have been injured.

Notes—

1 If you answered yes to question 3.2, you must also complete this Part. If you also employed the claimant, and have completed all of Part 3, you only need to answer questions 4.1-4.4, and 4.7-4.10.

2 If the claimant alleges that the claimant's injury was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was exposed to asbestos at premises occupied or controlled by you, you should also complete this Part. In completing this Part you should construe a reference to the claimant as a reference to the person who it is alleged you employed except in relation to questions 4.7-4.12 where you should answer each question with respect to both the claimant and the person you employed.

4.1 What are the premises to which the claim relates?

4.2 Do you admit that you occupied or controlled the premises at the time of the alleged exposure?

Yes No Do not know

If yes, proceed to question 4.3.

If no, what evidence do you have and what evidence do you intend to obtain to support your position? If you know who occupied the premises during the period, identify that person. Any evidence which you have at present should be attached to this form.

If you do not know, do you have any evidence to contradict the claimant's allegation? Any evidence which you have at present should be attached to this form.

4.3 Do you admit that you occupied the premises for the whole of the period during which exposure is alleged to have occurred?

Yes No Do not know

If yes, proceed to question 4.4.

If no—

(a) for what period do you admit that you occupied the premises?

(b) what evidence do you have to support this admission? Any evidence which you have at present should be attached to this form.

If you do not know or do not admit you occupied the premises during any period, do you have any evidence to contradict the claimant's allegation? Any evidence which you have at present should be attached to this form.

4.4 Do you admit that the claimant was exposed to asbestos at the premises occupied or controlled by you?

Yes No Do not know

If yes, proceed to question 4.5.

If no, on what basis do you dispute the allegation that the claimant was exposed to asbestos at premises controlled or occupied by you? Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.5 Do you agree with the claimant's description of—

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity and duration of exposure;

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 4.6.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question. Summarise the type of evidence on which you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.6 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 4.7 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

4.7 Do you admit that you owed a common law duty of care to the claimant as an occupier during the period of alleged exposure?

Yes No

If yes, proceed to question 4.8

If no, on what basis do you claim that you did not have a duty?

4.8 Regardless of whether or not you admit that you had a duty, did you discharge the common law duty to the standard of a reasonable person, for example, by providing instructions on the safe use and handling of asbestos or by taking reasonable precautions?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 4.9.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.9 Do you admit that you owed a statutory duty to the claimant as an occupier or otherwise during the alleged period of exposure?

Yes No Do not know

If yes, proceed to question 4.10.

If no or you do not know, on what basis do you claim that you did not have a duty? Summarise the type of evidence on which you intend to rely to support your position.

4.10 Do you admit that your breach of duty (whether common law or statutory) is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 4.11.

If no, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the reasons why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.11 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty (whether common law or statutory) or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 4.12.

If no, set out the basis of your argument as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.12 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 5.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

Part 5 Response to claim as a manufacturer or supplier of asbestos

To be completed by a defendant who is alleged to have manufactured or supplied asbestos which has injured the claimant. This includes products which are manufactured or supplied as part of plant or equipment.

Note—

If the claimant alleges that the claimant's injury was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was exposed to asbestos manufactured or supplied by you, you should also complete this Part. In completing this Part you should construe a reference to the claimant as a reference to the person who it is alleged was exposed to the product manufactured or supplied by you.

5.1 What are the asbestos products to which is it alleged that the claimant was exposed as set out in the claimant's statement of particulars?

5.2 Do you admit that you manufactured or supplied those products at any time?

Yes No Do not know

If yes, proceed to question 5.3.

If no, on what basis do you assert that you did not manufacture or supply those products? If you know who supplied or manufactured those products, identify that person. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.3 Do you admit that the claimant was exposed to products manufactured or supplied by you in the circumstances alleged by the claimant or otherwise?

Yes No Do not know

If yes, proceed to question 5.4.

If no, on what basis do you disagree with the claimant's version of events? Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.4 What was the composition of each asbestos product you admit to manufacturing or supplying, including the type and quantity of asbestos?

5.5 Do you agree with the description of—

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity or duration of exposure?

Yes No Do not know

If you answered yes or do not know to both of the above questions, proceed to question 5.6.

If you answered no to one or both of the above questions, set out the basis on which you disagree with the claimant's description. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 5.6 Do you admit in the period alleged that you failed to provide to the persons who used your products instructions as to the steps to be taken to handle asbestos in a safe manner or warnings as to the risks associated with asbestos?

Yes No

If yes, proceed to question 5.7.

If no, set out in detail the instructions or warnings which you say were provided, including details on how or by what means those instructions were conveyed to the user of the product. Specify for each relevant product the date on which you claim that warnings or instructions first appeared. Summarise the type of evidence on which you intend to rely to support your position.

- 5.7 Do you admit that you owed a common law duty of care to the claimant during the period of alleged exposure?

Yes No

If yes, proceed to question 5.8.

If no, why do you believe that you did not have a duty?

- 5.8 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 5.9 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

- 5.9 Do you admit that you failed to discharge your common law duty of care to the standard of a reasonable person?

Yes No Do not know

If yes, proceed to question 5.10.

If no, provide a detailed response setting out how you discharged the duty to the standard of a reasonable person, for example, by providing instructions on the safe use and handling of asbestos or by providing warnings. Provide a detailed description of those measures and summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 5.10 Do you admit that your breach of duty of care is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 5.11.

If no, provide detailed information concerning the reasons why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.11 Regardless of whether or not you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty of care and whether or not you admit that you breached any duty of care, do you admit that the conduct alleged by the claimant to have been engaged in by you (in particular the manufacture or supply of the products) is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 5.12.

If no, provide detailed information concerning the reasons why you do not admit the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.12 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 7.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

Part 6 Response to other claims

This part is to be completed by a defendant who does not fit within the categories in Part 3, 4 or 5. You do not have to complete this Part if you have completed Part 3, 4 or 5.

6.1 Do you admit that the claimant was exposed to asbestos in the manner alleged by the claimant?

Yes No Do not know

If yes, proceed to question 6.2.

If no, on what basis do you dispute the claimant's allegation that they were exposed to asbestos in the manner alleged. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.2 Do you agree with the claimant's description of—

(a) the circumstances in which exposure occurred (including the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity and duration of exposure;

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 6.3.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question. Summarise the type of evidence on which you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.3 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 6.4 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

6.4 Do you admit that you owed a duty to the claimant (either common law or statutory) during the period of alleged exposure?

Yes No

If yes, proceed to question 6.5.

If no, on what basis do you claim that you did not have a duty?

6.5 Regardless of whether or not you admit that you had a duty, did you discharge the duty?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged the duty and provide detailed information concerning the steps taken which you consider discharged the duty. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 6.6.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.6 Do you admit that your breach of duty is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 6.7.

If no, set out the basis for your reasons as to why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.7 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 6.8.

If no, set out the basis for your reasons as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.8 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 7.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

Part 7 Insurance

Do you believe that you may be entitled to recover all or part of the damages from your former or current insurer?

Yes No Do not know

If yes, specify the insurer, the type of insurance, the period of cover and whether there is any limit to the cover provided. If you answered that you do not know you should indicate when you expect to be in a position to answer this question.

Part 8 Apportionment of liability among defendants

A standard presumption set out in the Table in clause 5 (1) of Schedule 1 to the *Dust Diseases Tribunal (Standard Presumptions—Apportionment) Order 2007* will be used to apportion liability among the defendants if the defendants cannot agree on apportionment.

A standard presumption will be used to assign a share of liability to each defendant depending on which category it falls into. The standard presumptions vary according to the period in which the exposure occurred and the category of defendant. The Contributions Assessor may vary the standard presumption applying to a claim having regard to the factors set out in clause 5 (5) and (6) of Schedule 1 to the Order, but the Contributions Assessor may not vary the standard presumptions outside of the permitted range.

Answer the following questions.

8.1 Into which category should each defendant be placed?

8.2 How should the standard presumptions be varied to take account of the level of knowledge which you believe should be assigned to each Category 2 defendant, (including yourself if relevant)? Set out the basis for your position.

Note—

Please note, the standard presumptions have been prepared on the basis that Category 1 defendants are presumed to have had actual knowledge of the risks of asbestos, so it cannot be argued that the presumption should be varied against a Category 1 defendant on the basis of its level of knowledge.

8.3 What level of knowledge should be attributed to each Category 2 defendant, including yourself, as to the risks of asbestos (either of the kind suffered by the claimant or other personal injury) at the time of the alleged exposure? Set out the basis for your position, including references to any cases on which you intend to rely to support your position.

8.4 If other findings have been made in relation to your knowledge of the risks of asbestos at the time of the alleged exposure, provide details of those cases. Do you intend to rely on or dispute those findings? If you intend to dispute those findings, on what basis?

8.5 Should the standard presumptions be varied on the basis of the identity, capacity, size or state of sophistication of a particular defendant (including yourself), including the industry, and nature of the industry in which the defendant was engaged? Set out the basis for your position.

8.6 Should the standard presumptions be varied on the basis of the number of defendants identified in each category as being at fault in connection with the claim? Set out the basis for your position.

8.7 Should the standard presumptions be varied having regard to the steps which a particular defendant (including yourself) took, ought to have taken and/or was capable of taking to minimise the risk of harm? Set out the basis for your position.

8.8 Should the standard presumptions be varied for any other reason? Set out the basis for your position.

8.9 If there are more than two defendants in any one category, are there any particular factors relating to the blameworthiness of those defendants which would justify sharing the apportioned liability between those defendants other than on an equal basis? Set out the basis of your position.

Part 9 Compensation

To be completed by all defendants, including cross-defendants.

Provide a detailed response to each question indicating whether you agree with the claimant's assessment of damages. If you disagree with the claimant's assessment, you must specify the facts and circumstances on which you rely to establish your position.

9.1 Are there any other conditions or injuries which you believe contributed to the claimant's damage?

Yes No

If yes, specify the other conditions or injuries.

9.2 Set out the facts and circumstances on which you say the level of general damages should be calculated and the amount which should be awarded. Your response should indicate the extent to which you say other conditions or injuries contribute to the claimant's pain and suffering and loss of enjoyment of life, whether you dispute the claimant's evidence as to prognosis and details of any previous awards of the Tribunal which you think are relevant. Summarise the type of evidence on which you intend to rely to support your position.

9.3 Do you agree with the claimant's assessment of—

(a) the alleged per weekly loss;

(b) the period of time over which the per weekly loss is alleged to occur;

(c) the assessment of the personal expenditure of the claimant?

Yes No Not applicable

If yes, proceed to question 9.4.

If no, set out the basis on which you dispute each of the matters set out above. Summarise the type of evidence on which you intend to rely to support your position.

9.4 Do you agree with the claimant's assessment of the cost of future medical care?

Yes No Not applicable

If yes, proceed to question 9.5.

If no, set out the basis on which you say future medical care should be assessed. Summarise the type of evidence on which you intend to rely to support your position.

9.5 Do you agree with the claimant's assessment of out of pocket expenses?

Yes No Not applicable

If yes, proceed to question 9.6.

If no, set out the basis on which you say out of pocket expenses should be assessed. Summarise the type of evidence on which you intend to rely to support your position.

9.6 Do you agree with the claimant's assessment of personal care costs, both past and future?

Yes No Not applicable

If yes, proceed to question 9.7.

If no, set out the basis on which you say personal care costs should be assessed, with particular attention to

the nature and level of care required and the cost of that care. Summarise the type of evidence on which you intend to rely to support your position.

9.7 Do you agree with the claimant's assessment of the cost of services provided to third parties?

Yes No Not applicable

If yes, proceed to question 9.8.

If no, set out the basis on which you say the cost of services provided to third parties should be assessed, with particular attention to the nature of the services and the claimant's circumstances. Summarise the type of evidence on which you intend to rely to support your position.

9.8 Do you agree with the claimant's assessment of the cost of home modifications?

Yes No Not applicable

If yes, proceed to Part 10.

If no, set out the basis on which you say the cost of home modifications should be assessed. Summarise the type of evidence on which you intend to rely to support your position.

Part 10 Compensation to Relatives

To be completed if compensation under the [Compensation to Relatives Act 1897](#) has been claimed.

Provide a detailed response to each question indicating whether you agree with the claimant's statement of dependency and assessment of damages. If you disagree with the claimant's statement or assessment, you must specify the facts and circumstances on which you rely on to establish your position.

10.1 Do you agree with the claimant's statement of dependency?

Yes No Not applicable

If yes, proceed to question 10.2.

If no, set out the basis on which you dispute the claimant's statement of dependency. Summarise the type of evidence on which you intend to rely to support your position.

10.2 Do you agree with the claimant's assessment of damages claimed by dependents?

Yes No Not applicable

If yes, proceed to Part 11.

If no, set out the basis on which you dispute the claimant's assessment of damages claimed by dependents. Summarise the type of evidence on which you intend to rely to support your position.

Part 11 Certification

The form must be completed by the defendant's claims manager or a solicitor acting for the defendant.

I, [Name], [Position], [Company/Solicitor's Firm], certify that I reasonably believe on the basis of provable facts and a reasonably arguable view of the law that the defence set out in this reply has reasonable prospects of success if the matter were to be litigated before the Tribunal.

Claims manager's or defendant's solicitor's signature—

Title—

Date—

Form 3 Claims information

(Clause 97)

Information concerning claims

Claim details

Proceedings number

Name of claimant

Name of each defendant

Name of each cross-defendant

If you are a solicitor, party for which you acted

If you are a solicitor, name of your firm and solicitor on the record

Nature of claimant's injury

- Mesothelioma
- Asbestosis
- Asbestos related cancer
- Asbestos related pleural diseases

Compensation awarded or agreed

Was the claim settled or determined by the Tribunal?

- Settled
- Judgment

(Tick the appropriate box)

- After filling the statement of claim but before serving the statement of claim and statement of particulars
- After serving the statement of claim and statement of particulars but before the defendant or defendants file a reply
- Where there is only one defendant, after the reply is filed but before the claim is referred for mediation
- Where there is more than one defendant, after the defendants file their replies but before they agreed on contribution or the claim is referred to a Contributions Assessor
- Where there is more than one defendant, if the defendants agree on contribution, after that agreement but before the claim is referred for mediation

At what stage was the claim settled or determined?

- Where there is more than one defendant, if the claim is referred to a Contributions Assessor, after that referral but before the Contributions Assessor makes a determination
- Where there is more than one defendant, if the claim is referred to a Contributions Assessor, after the Contributions Assessor makes a determination but before the claim is referred to mediation
- After the claim is referred for mediation but before the mediation occurs
- During mediation
- After an unsuccessful mediation but before the claim is returned to the Tribunal
- After the claim is referred to the Tribunal but before the Tribunal makes a determination
- Judgment by the Tribunal

If the claim was settled, state the amount for which the claim was settled (including the amount of any costs included in the statement or assessed separately)

Total amount (including costs)—
Costs (if separately agreed or assessed)—

If the claim was not settled, state the quantum of damages awarded at judgment (including the amount of any costs agreed or assessed)

Total amount (including costs)—
Costs (if separately agreed or assessed)—

Have you previously been awarded provisional damages for an asbestos related injury?

Legal costs and disbursements

Total solicitor/client costs (including amounts recovered from the defendants)—excluding disbursements

Counsel's fees

Cost of expert reports obtained (list each report separately, identifying the nature of the report including specialty (eg medical report (pathology), occupational therapist, industrial hygienist) and the cost of each report

Other disbursements

Costs recovered

Specify the amount of legal costs recovered. List the amount recovered from each other party separately and identify that party.

Specify the amount of disbursements recovered. List the amount recovered from each other party separately and identify that party.

Were costs recovered on an indemnity basis? List the amount recovered from each other party separately and identify that party.

If costs were recovered on an indemnity basis, describe the circumstances in which this order was made

If a defendant, the amount paid to a single claims manager (whether another defendant or an independent claims manager)

Contributions Assessor

Was any matter referred to a Contributions Assessor for determination?

Single claims manager

Was a single claims manager used or did all the defendants decide not to use a single claims manager?

Name of single claims manager

Who selected the single claims manager (defendants, registrar or Contributions Assessor)?

Single claims manager costs and disbursements (to be completed by those acting as a single claims manager only)

Operational costs—excluding disbursements

External legal costs—excluding disbursements

Counsel's fees

Cost of expert reports obtained (list each report separately, identifying the nature of the report including specialty (eg medical report (pathology), occupational therapist, industrial hygienist) and the cost of each report

Other disbursements

Signature—