

# Dust Diseases Tribunal Rules (1990 SI 91)

[1990-91]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

These Rules were repealed by cl 30 of the *Dust Diseases Tribunal Rules 2019 (379)* with effect from 9.8.2019.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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## Contents

|  |    |
|--|----|
| 1 Name of Rules .....  | 4  |
| 2 Application of Supreme Court Rules .....   | 4  |
| 3 Registrar may extend limitation period .....   | 4  |
| 4 Interrogatories .....  | 4  |
| 5 Provisional damages .....  | 4  |
| 6 Discovery and inspection of documents .....  | 5  |
| 7 Discovery and inspection of documents after 1 January 1997 .....                     | 6  |
| 8 Limitation of section 25A (Material already obtained) .....                          | 8  |
| 9 General issues already determined .....  | 8  |
| 10 Particulars where expedited hearing sought .....                                    | 8  |
| 11 Proceedings against more than one alleged tortfeasor .....                          | 9  |
| 12 Application of section 151AC of the Workers Compensation Act 1987 .....             | 9  |
| 13 Arbitration for insurance purposes .....  | 9  |
| 14 Provision of information as to amount recoverable by Dust Diseases Board .....      | 11 |
| 15 Interpretation and application .....  | 11 |
| 16 Conduct money .....   | 12 |
| 17 Medical expert not called .....   | 13 |
| 18 Production by non-party .....   | 13 |
| 19 Retention and return of exhibits .....  | 14 |
| 20 Issue .....   | 14 |
| 21 Notice to be given to other parties concerning subpoenas requiring production ..... | 15 |
| 22 Access to subpoenaed material .....   | 16 |
| 23 Proposed access orders .....  | 16 |
| 24 Exercise of functions by Registrar .....  | 17 |

|  |    |
|--|----|
| 25 Time for service .....                              | 17 |
| 26 Subpoena to medical expert.....                     | 17 |
| 27 Setting aside .....                                 | 18 |
| 28 Expense and loss.....                               | 18 |
| 29 Alteration to obligations .....                     | 18 |
| 30 Application of Part 3.10 of Evidence Act 1995 ..... | 18 |

# Dust Diseases Tribunal Rules (1990 SI 91)



New South Wales

## 1 Name of Rules

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

## 2 Application of Supreme Court Rules

If these Rules provide that specified provisions of the rules of court of the Supreme Court apply to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction, those provisions so apply:

- (a) in the same way as they apply in proceedings before the Supreme Court and to matters in respect of which that Court has jurisdiction, and
- (b) with necessary modifications and to the extent that they are not inconsistent with the *Dust Diseases Tribunal Act 1989*.

## 3 Registrar may extend limitation period

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

## 4 Interrogatories

Part 24 (except rule 1 (3) of that Part) of the *Supreme Court Rules 1970* applies to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction.

## 5 Provisional damages

- (1) This rule applies to proceedings which the Tribunal is satisfied are proceedings to which section 11A of the Act applies.

- (2) In this rule:

**further damages** means damages as referred to in section 11A (2) (b) of the Act.

**provisional damages** means damages as referred to in section 11A (2) (a) of the Act.

- (3) The Tribunal may, subject to this rule, award provisional damages in proceedings, on such terms as the Tribunal thinks just, and give judgment accordingly, if the plaintiff has pleaded a claim for provisional damages in the proceedings.
- (4) An order for an award of provisional damages must specify the dust-related condition in respect of which an award of further damages may be made.
- (5) An order for an award of provisional damages may be made in respect of more than one dust-related condition.
- (6) For the purposes of subrule (3), a plaintiff has not pleaded a claim for provisional damages unless the statement of claim in the proceedings specifies the dust-related condition in respect of which the plaintiff claims provisional damages and the other dust-related condition in respect of which the plaintiff seeks an order that further damages may be claimed.
- (7) Where in proceedings the plaintiff has pleaded a claim for provisional damages and a defendant makes an offer of compromise, the offer may be expressed to be an offer to agree to the making of an award of provisional damages and an offer as to the amount of those damages, and where the plaintiff accepts an offer so expressed the plaintiff must as soon as practicable apply to the Tribunal for an order in accordance with subrule (4).
- (8) Where the Tribunal has made an award of provisional damages in proceedings and the plaintiff seeks to claim further damages, the following provisions apply:
  - (a) the application must be made by notice of motion served, at least 7 days before the day on which it is returnable, on each defendant in respect of the claim, and if that defendant is to the plaintiff's knowledge insured in respect of the claim, on the insurer,
  - (b) on the hearing of the application the Tribunal must give such directions as may be appropriate for the future conduct of the proceedings, including, but not limited to, the joinder of parties, the disclosure of medical and other expert reports, and the place and date of the hearing of the application for further damages,
  - (c) only one application for further damages may be made in respect of each dust-related condition specified in the order for the award of provisional damages, and
  - (d) where the Tribunal awards further damages and awards interest in respect of those damages or any part of them, that interest shall, unless the Tribunal otherwise orders, relate only to the period, or part of the period, between the date of the plaintiff's notice given under paragraph (a) and the date of the award.

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

- (1) Part 23 of the *Supreme Court Rules 1970*, as substituted by Amendment No 303

published in the Government Gazette of 19 July 1996 at page 4336, does not apply to proceedings before the Tribunal or to matters in respect of which the Tribunal has jurisdiction.

- (2) Part 23 of the *Supreme Court Rules 1970*, as it was immediately before the amendment referred to in subrule (1), applies to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction.

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

- (1) Rule 6 does not apply to proceedings before the Tribunal commenced on or after 1 January 1997.
- (2) Part 23 of the *Supreme Court Rules 1970* applies, subject to the adaptations specified in subrule (3), to proceedings before the Tribunal commenced on or after 1 January 1997.
- (3) The adaptations mentioned in subrule (2) are:
- (a) Part 23 rule 3 (5), (6)
- Omit “were later than 6 months prior to the commencement of the proceedings” where occurring, insert instead “have been”,
- (b) After Part 23 rule 6 insert:

## **7 Discovery in other proceedings**

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

## **8 Standard list of documents**

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

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

- (2) Where subrule (1) takes effect in respect of an order for discovery, the Tribunal may order that it cease to have effect and that party B comply with the order for discovery as though no standard list of documents had been filed.
- (3) A standard list of documents filed under subrule (1) must be a list, complying with rule 3 (6), of all the documents (other than excluded documents) which might reasonably be specified in an order for discovery made against party B in proceedings in the Tribunal and which:
  - (a) are in the possession, custody or power of party B, or
  - (b) are not, but have been, in the possession, custody or power of party B.
- (4) An affidavit filed under subrule (1) must be an affidavit as referred to in rule 3 (5) (b).
- (5) A certificate filed under subrule (1) must be a certificate as referred to in rule 3 (5) (c).
- (6) An undertaking filed under subrule (1) must be party B's undertaking that:
  - (a) party B waives any objection to the use of the standard list and of copies of any of the documents in the standard list, in proceedings in the Tribunal against party B, on the ground that the standard list or any of the documents has been the subject of an order for discovery in other proceedings, and
  - (b) if party B becomes aware:
    - (i) that any document which should, under subrule (3), be included in part 1 of the standard list, but which is not so included, is within, or has come into, party B's possession, custody or power, or
    - (ii) that any document included in part 1 of the standard list which was claimed to be a privileged document was not, or has ceased to be, a privileged document,

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

- (7) Party B may at any time amend a standard list of documents filed by him, but must as soon as practicable give notice of the amendment to party A in any proceedings current before the Tribunal in which the standard list is party B's list of documents.
- (8) Party B may at any time withdraw a standard list of documents filed by him, but where the standard list has become party B's list of documents in any proceedings it shall remain that list of documents despite the withdrawal.
- (9) Party B must not, by filing a standard list of documents or by relying on the standard list in any proceedings, be taken to admit that any document listed, which came into existence after the last date of the occurrences sued on or particularised in the proceedings, is relevant to the proceedings.
- (10) The Tribunal shall keep possession of, and maintain a register of, all standard lists of documents filed with it, but shall not make any such list available for search by any person other than the party who filed it.

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

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

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

- (1) A party who intends to rely in any proceedings on the determination in other proceedings of an issue of a general nature, as referred to in section 25B (1) of the Act, must within a reasonable time file and serve on all other parties notice of that intention, including full particulars of the precise issue alleged to have been determined and as to when, where and by whom the issue is alleged to have been determined.
- (2) Subrule (1) does not prevent the Tribunal from determining on its own motion that an issue is an issue to which section 25B (1) of the Act applies.

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

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



### 11 Proceedings against more than one alleged tortfeasor

- (1) Unless the Tribunal otherwise orders, a plaintiff who settles a claim with one or more but not all the alleged tortfeasors must file the terms of settlement and particulars of amounts paid under the settlement:
  - (a) where proceedings on the claim against another or others of the alleged tortfeasors are pending, as soon as practicable, or
  - (b) otherwise, on commencement of any proceedings on the claim against another or others of the alleged tortfeasors.
- (2) Unless the Tribunal otherwise orders, the Tribunal or a member, registrar or other officer of the Tribunal may disclose any terms and particulars filed under subrule (1) to another party to the proceedings, whether or not the terms contain non-disclosure requirements.

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

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

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

### 13 Arbitration for insurance purposes

- (1) In this rule:

**arbitrator** means arbitrator of disputes appointed under this rule.

**dispute** means dispute as to the liability of insurers as referred to in section 151AC of the [Workers Compensation Act 1987](#).

- (2) The registrar is appointed as an arbitrator.
- (3) The President may appoint as an arbitrator any person approved by the President.
- (4) The Tribunal or the registrar may, if the Tribunal or registrar thinks fit, and whether or not any application is made for the order, by order refer a dispute to an arbitrator named in the order, and may, but need not, in the order specify a place where and a day on which the arbitration of the dispute is to take place.
- (5) If no place or day is specified in an order made under subrule (4), the registrar may by direction specify such a place or day.
- (6) For the purposes of section 20 (1) of the Act, an arbitration under section 38 of the Act is a proceeding before the Tribunal, and a subpoena to give evidence issued in respect

of an arbitration must be made returnable before the arbitrator.

- (7) In an order made under subrule (4) or a subsequent order:
- (a) the Tribunal or registrar may specify the insurers or other persons who are or were parties to the original proceedings before the Tribunal and who are to be parties to the arbitration, and
  - (b) the Tribunal may join as parties to the arbitration insurers or other persons who were not parties to the original proceedings before the Tribunal.
- (8) An arbitrator must, if not prepared to hear and determine a dispute referred to the arbitrator, so inform the Tribunal or registrar as soon as practicable, specifying the arbitrator's reasons.
- (9) If an arbitrator declines or fails to hear and determine a dispute, the Tribunal or registrar must revoke the order referring the dispute to the arbitrator, and may make another order referring the dispute to an arbitrator.
- (10) An arbitrator may from time to time adjourn the arbitration of a dispute which the arbitrator has commenced to hear.
- (11) Subject to subrule (10), an arbitrator must, on the day (if any) specified under subrule (4) or (5), or to which the arbitration has been adjourned under subrule (10), and in any case within a reasonable time, hear, or continue to hear, and determine the dispute, whether or not in the absence of any party to the dispute.
- (12) An arbitrator must within a reasonable time after hearing and determining a dispute reduce the arbitrator's determination to writing, including the reasons for the determination, and, if the arbitrator is not the registrar, forward the determination to the registrar.
- (13) The reasons for a determination must be specified to the extent that, in the opinion of the arbitrator, they make the parties to the dispute aware of the arbitrator's view of the case made by each of them.
- (14) The registrar must, forthwith after completing or receiving a determination in writing, send a copy of the determination, endorsed with the date of sending, to each party to the dispute.
- (15) If the arbitrator is not the registrar, the arbitrator's fees may be assessed by consent of the parties to the dispute, and failing any such consent:
- (a) the arbitrator's fees may be determined by the arbitrator in accordance with any applicable scale of fees to arbitrators, and
  - (b) if there is no applicable scale of fees to arbitrators, the Tribunal or registrar may determine the arbitrator's fees at an amount not exceeding the amount that would

be payable if the work done by the arbitrator had been work done by a legal practitioner.

- (16) Unless the Tribunal or registrar otherwise orders, the fees payable to an arbitrator and any other fees or other expenses incurred in respect of an arbitration are:
- (a) payable equally between the parties to the dispute, and
  - (b) payable in the first instance by the party (if any) who requested the referral to arbitration, and
  - (c) recoverable by any party who has paid them against the other parties to the dispute proportionately.
- (17) Costs in respect of an arbitration are within the discretion of the arbitrator, and assessable, as though the arbitration were proceedings before the Tribunal and the arbitrator were the Tribunal.
- (18) The determination of an arbitrator may be called in question on a matter of fact or law, but only on application made under section 38 (4) of the Act.
- (19) An application under section 38 (4) of the Act must be made within 28 days of the date of sending endorsed under subrule (14) on the determination the subject of the application.

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

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

#### **15 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) This Part applies to subpoenas issued on or after the commencement of this Part.
- (3) The provisions of this Part apply to the exclusion of the equivalent provisions of the rules.

## 16 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.

### **17 Medical expert not called**

- (1) Where a subpoena is served on a medical expert who is to give evidence of medical matters and the medical expert is not called as a witness, he or she is, unless he or she was given notice, 14 days or more before the date of his or her attendance, that his or her attendance would not be required on that date or unless the Tribunal otherwise orders, be entitled to be paid \$167.00 in addition to any amount paid under clause \*16 (Conduct money).
- (2) The amount payable under subclause (1) is to be paid by the party who requested the issue of the subpoena to the expert within 30 days after the date for his or her attendance.
- (3) Unless the Tribunal otherwise orders the amount paid under subclause (2) is not recoverable from any other party.

### **18 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 persons' 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) Where a document or thing is produced to the Registrar pursuant to subclause (1) and before the document or thing is tendered to the Tribunal the hearing of the proceedings is adjourned, other than to a date then fixed, the subpoena is no longer of any force or effect, and the Registrar is at liberty to return the document or thing to the person who produced it unless the claim is subject to the claims resolution process under Part \*4.
- (4) Subclause (3) does not operate to prevent the issue of a further subpoena requiring the production of a document or thing returned by the Registrar under that subclause.
- (5) This clause does not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

## **19 Retention and return of exhibits**

- (1) The Tribunal may:
  - (a) order that exhibits in any proceedings be retained by the Tribunal until the expiry of any period, or the occurrence of any event, specified in the order for the return of the exhibits, or
  - (b) order that exhibits in any proceedings that have been returned to the person who originally produced them to the Tribunal or Registrar be returned to the Tribunal for the purposes of the determination of a cross-claim arising out of the proceedings.
- (2) Exhibits in any proceedings in which judgment is given or a final order is made are to be returned to the persons who produced them to the Tribunal or Registrar:
  - (a) if the Tribunal makes no order that the exhibits be retained and no appeal to the Supreme Court is brought in respect of the proceedings within the period provided for an appeal by or under the *Supreme Court Act 1970*—immediately after the expiry of that period, or
  - (b) if the Tribunal makes no order that the exhibits be retained and leave to appeal to the Supreme Court is refused in respect of the judgment or final order in the proceedings—immediately after the Tribunal or Registrar is notified of the refusal to grant leave, or
  - (c) if the Tribunal makes an order that the exhibits be retained—at the expiry of the period, or on the occurrence of the event, specified in the order for the return of the exhibits.
- (3) A person to whom exhibits are to be returned under subrule (2) is to obtain the return of, and give the Registrar a receipt for, the exhibits as soon as is practicable after the first day on which exhibits are to be returned.
- (4) The Registrar is responsible for the safe custody of any exhibits only for a period of 14 days after the first day on which exhibits are to be returned.
- (5) This rule applies to any exhibits produced in proceedings, whether on subpoena or otherwise.

## **20 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 any of the subpoenas 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 \*4, 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 commencement 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.

## **21 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 \*29 (2) (Alteration to obligations) before the time when the requesting party had to comply with that requirement.
- (6) Nothing in this clause affects the operation of clause \*26 (Subpoena to medical expert).

## **22 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.

## **23 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 \*22 (Access to subpoenaed material), the Tribunal may:
- (a) endorse a proposed access order on a subpoena requiring production if the requesting party has not endorsed such 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 such 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 \*21 (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.

#### **24 Exercise of functions by Registrar**

- (1) The functions of the Tribunal under clauses \*22 and \*23 may, unless the Tribunal otherwise orders, be exercised by the Registrar.

#### **25 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 persons' 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.

#### **26 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) The parties may not by consent abridge the time fixed by or under subclause (1).

- (3) 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.
- (4) A subpoena requested under subclause (3) 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.
- (5) Clause \*16 (Conduct money) does not apply to a subpoena requested under subclause (3).
- (6) Clause \*18 (Production by non-party) applies to the photocopies as it applies to the records.

## **27 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.

## **28 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 \*16 (Conduct money), 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.

## **29 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.

## **30 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.