



Dust Diseases Tribunal of New South Wales

ADVICE TO PRACTITIONERS

No 1 of 2007

The *Dust Diseases Tribunal Regulation 2007* was made on 28 February 2007 and published in the Gazette on 2 March 2007. The commencement date for most on the provisions of the regulation is 2 March 2007, although some provisions will commence on 12 March 2007. The final regulation can be found on the Tribunal's website and at www.legislation.nsw.gov.au. A paper has been prepared on the Dust Diseases Tribunal Regulation 2007 and a copy of the paper as well as the Final Regulation can be obtained from the Legislation and Policy Division site of Lawlink at www.lawlink.nsw.gov.au

The attention of practitioners is drawn to the following provisions of the *Dust Diseases Tribunal Regulation 2007*:

Clause 9 First directions hearing fee

(1) A first directions hearing fee in relation to any proceedings is payable:

- (a) except as provided by paragraph (b), by the plaintiff, or
- (b) if the Tribunal makes any order as to the payment of the fee, by the parties and in the proportions so ordered.

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

(2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for 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 65 (Non-urgent claims to be subject of directions hearing), 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 4, 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.

**Clause 20 Suspension of claims resolution process if plaintiff dies
(2-6)**

(2) If the plaintiff dies, the person who represented the plaintiff in the proceedings or (if the plaintiff was not represented) the plaintiff's legal personal representative must notify each defendant and the Registrar in writing of the plaintiff's death as soon as practicable after becoming aware of the plaintiff's death (unless the death occurred before the commencement of this subclause).

*(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 or within 10 business days after the commencement of this subclause if the plaintiff died before that commencement.*

(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 the commencement of this subclause 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) Subclauses (2)–(6) commence on 12 March 2007.

Clause 25 (6) Cross-claims by defendant

6) If the time for filing and serving a cross-claim is extended, the original defendant must notify the Registrar in writing of the extension without delay (but only if the cross-claim is filed and served after the commencement of this subclause). This subclause commences on 12 March 2007.

Clause 26 (9) Defendant to provide reply to claim

(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.

Clause 32 (3 and 8) Timetable for referral for mediation

(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.

(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).

Clause 47 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 18) the cross-claim remains subject to the claims resolution process.*

(3) Subclause (2) extends to a case where the original claim was settled or determined before the commencement of this clause where the first directions hearing for the cross-claim had not been held as at that commencement but does not extend to such a case if all of the cross-defendants agree that it should not apply to the case and the Registrar is notified by the cross-claimant in writing of that agreement within 10 business days after the commencement of this clause.

(4) If subclause (2) extends to a case because of the operation of subclause (3), this Division applies to the case 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 16 March 2007.

Clause 49 Determination of apportionment failing agreement

(1) If by the end of the period within which the defendants are required to reach agreement as to apportionment an apportionment statement setting out details of the apportionment of liability that the defendants have agreed to has not been filed with the Registrar, 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 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 2005.

(5) The defendants may agree that for the purposes of the Contribution 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). This subclause does not apply in a case in which the matter was referred to the Contributions Assessor before the commencement of this clause.

(6) A Contributions Assessor's determination is to be made within:

(a) 40 business days for malignant claims, or

*(b) 80 business days for non-malignant claims,
after service of the plaintiff's statement of particulars on the last of the original defendants.*

(7) 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.

(8) 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 does not prevent the subsequent taking, or determination by the Tribunal, of a dispute between defendants as to apportionment.

(9) The Registrar is to provide each defendant with a copy of the Contribution Assessor's determination as soon as practicable after the determination is made.

(10) If there is a clerical mistake, or an error arising from an accidental slip or omission, in a determination of a Contributions Assessor (not being a mistake or error made before the commencement of this clause), 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.

(11) A defendant who applies for the correction of a mistake or error must give notice of the application to each other defendant.

(12) 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.

The attention of practitioners is also drawn to Division 6 of the Regulation.

David Martin
Registrar

5 March 2007