

# Practice Note DC (Civil) No. 12

## Coal Miners' Workers Compensation List

### 1. Application

- 1.1 This Practice Note applies to proceedings in the Coal Miners' Workers Compensation List and replaces the Practice Note dated 29 March 2012.
- 1.2 Schedule 6, Part 18 of the *Workers Compensation Act 1987* makes special provision relating to coal miners. Clause 3.1 provides that subject to that clause the 2001 amendments do not apply to coal miners and that this Act and the *Workplace Injury Management and Workers Compensation Act 1998* (and the regulations made under those Acts) apply to coal miners' claims as if the 2001 amendments had not been enacted.
- 1.3 The *Compensation Court Repeal Act 2002* conferred on the District Court, effective from 1 January 2004, jurisdiction to examine, hear and determine all coal miner matters (except common law matters). Refer to Division 8A of the *District Court Act 1973* (Residual Jurisdiction of Court).
- 1.4 The rules relating to proceedings in the Coal Miners' Workers Compensation List are contained in Schedule 11 to the *Uniform Civil Procedure Rules 2005*.

### 2. Statements of Claim

- 2.1 A statement of claim must be lodged with certification that the commencement of such proceedings is not contrary to sections 101, 102 or 103 of the 1998 Act.
- 2.2 Upon filing a statement of claim the matter will be listed before the Registrar on a date approximately 2 months after filing
- 2.3 At this mention before the Registrar, the parties will be expected to advise the Court on the matter's readiness to proceed to conciliation, including the availability of medical evidence, wage material (where relevant) and any outstanding requests for particulars

### 3. Conciliation

- 3.1 The Sydney and Newcastle Registries refer all statements of claim to a conciliator for conciliation.

- 3.2 The conciliator conducts a conciliation conference within approximately 4 months of the filing of the statement of claim.
- 3.3 On listing a conciliation conference the Conciliator will normally issue directions to produce documents. This is to assist the Conciliator to conciliate the dispute effectively. Such a direction is an order of the Court and failure to comply with the direction without reasonable excuse may lead to the exclusion of those documents from further proceedings in the Court or adverse costs orders.
- 3.4 Practitioners are reminded of their obligations under s 81A of the WIM Act which requires that reports and documents to be relied on at the conciliation be served at least 7 days before the conciliation conference. Last minute service of this material is not only in breach of s 81A but does not assist the conciliation process.
- 3.5 Genuine participation of parties to the dispute is essential to the success of conciliation. The worker should attend the conciliation conference as should a representative of the insurer who is familiar with the claim and who is authorised to discuss and negotiate settlement. Unless there are exceptional circumstances the solicitors with carriage of the matter should attend the conciliation conference.
- 3.6 If the conciliator forms the opinion that there has not been genuine participation in the conciliation by either or both parties the conciliator may adjourn the conciliation to a later date.
- 3.7 If a matter does not resolve at conciliation the parties will be expected to advise the Conciliator whether the matter is ready to take a hearing date or the reasons why it is not. They will also be expected to give an estimate of hearing length and advise the number of witnesses to be called, including experts to be cross-examined and any special circumstances affecting the listing.

#### **4. Hearings**

- 4.1 Where a matter does not resolve at conciliation the conciliator will return the matter to the list to be allocated a date for hearing at the next available sittings. Coal Miners' Workers Compensation Lists are kept in Newcastle and in Sydney (for southern and western coalminers). Callovers are held in Sydney only.

- 4.2 For matters in the Newcastle List the Court will issue a confirmation of hearing notice four weeks prior to the trial. Where conciliation occurs less than 4 weeks prior to hearing the conciliator will provide the parties with notice of the hearing date at the conclusion of the conciliation

## **5 Schedules of Earnings**

- 5.1 Where the quantum of weekly payments is an issue the plaintiff is required to serve a schedule containing full particulars of such earnings during the relevant period no later than 10 days before the conciliation.
- 5.2 If the accuracy of the plaintiffs schedule is disputed, the other party is required to serve within 7 days a notice containing its allegations of such earnings. A notice which merely denies or disputes the plaintiffs schedule does not comply with r 18.
- 5.3 Where parties are relying upon the earnings of comparable employees, such persons should be identified by name in the schedules.

## **6 Subpoenas**

- 6.1 Practice Note DC (Civil) No. 8 deals with early return of subpoenas.
- 6.2 Parties must issue subpoenas as early as possible so that documents can be produced, inspected and are available for the proper preparation of the case, including submission to experts.
- 6.3 Parties should inspect all documents produced under subpoena and serve the documents on which they rely at the earliest opportunity. Parties must ensure that they follow up any non-production of documents and take the appropriate action.
- 6.4 It is desirable that any issues arising in respect of subpoenas be dealt with in advance of the hearing but only after the parties have used their best endeavours to resolve these issues.

- 6.5 Unless a subpoena properly served has been set aside in whole or in part the party on whom the subpoena is served is required to produce the documents to the Court and if necessary, request the Court to determine access.
- 6.6 Subpoenas are liable to be set aside if found to be an abuse of process, contain insufficient particularisation of the documents called for, if they are being used as a substitute for discovery or otherwise lack legitimate forensic purpose.
- 6.7 If a party on whom a subpoena is served is unable to comply by the return date that party should apply to the registry for a new return date and inform the other parties. The Registrar will not normally give more than 3 return dates for a subpoena.

## **7 Medical Reports**

- 7.1 Primary expert reports are required to be served before the conciliation and any reports in reply or refresher reports must be served no later than 28 days before the hearing (r 22).
- 7.2 Medical reports tendered ought be accompanied by a schedule and be paginated if voluminous.

The Hon. Justice R.O. Blanch A.M.  
Chief Judge 14 April 2014