



Supreme Court of Victoria

Practice Note SC CL 2

Dust Diseases List

1 INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to describe the procedures to be followed in the Dust Diseases List.

2 DEFINITIONS

- 2.1 In this Practice Note:

Dust disease means a condition as described in paragraph 4.2

List means the Dust Diseases List

Regional Proceedings means proceedings where the cause of action arose in regional Victoria, or where the majority of parties or witnesses reside in regional Victoria.

3 COMMENCEMENT

- 3.1 This Practice Note commenced on 1 October 2018 and will apply to all proceedings in the List whenever commenced.

4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 4.1 All proceedings in which a plaintiff alleges that he or she is suffering from a dust disease should be initiated in the List, including Regional Proceedings which may otherwise fall within Practice Note SC CL 1 “Civil Circuit List”.
- 4.2 For the purposes of this Practice Note, ‘dust disease’ is defined as any pathological condition of the lungs, pleura, peritoneum or sinus that is attributable to dust. Without limiting the scope of the definition, dust diseases include:

- Aluminosis;
- Asbestosis;
- Asbestos induced carcinoma;
- Asbestos related pleural diseases;
- Bagassosis;
- Berylliosis;
- Byssinosis;
- Coal dust pneumoconiosis;
- Farmer's lung;
- Hard metal pneumoconiosis;
- Mesothelioma;
- Silicosis;
- Silico-tuberculosis; and
- Talcosis

4.3 Dependency claims arising from proceedings of the nature set out in paragraph 4.1 should also be initiated in the List.

5 PROCEDURE FOR ENTRY INTO THE LIST

5.1 Proceedings should be initiated in the List by endorsing the heading of the originating process "Dust Diseases List". The heading of all subsequent documents filed in the proceeding should also be endorsed "Dust Diseases List".

5.2 No additional fees will be payable for the inclusion of a proceeding in the List.

5.3 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the Court may transfer the proceeding into the List.

5.4 Conversely, a proceeding initiated in the List may be transferred out of the List if it appears to the Court that it is appropriate to have the proceeding managed in a different list.

6 COURT APPEARANCES

6.1 Non-admitted persons may appear at directions hearings but must seek leave of the Court at least one day beforehand by emailing dust.diseases@supcourt.vic.gov.au .

6.2 All persons appearing at directions hearings must be fully briefed on all relevant aspects of the matter so as to be in a position to assist the Court.

- 6.3 Subject to paragraph 6.4, parties are required to appear at directions hearings unless otherwise advised by the Court, including matters in which minutes of proposed consent orders have been submitted.
- 6.4 Parties involved in Regional Proceedings may request a telephone conference rather than appear at the first directions hearing. Such requests should be made via email to dust.diseases@supcourt.vic.gov.au.

7 FIRST DIRECTIONS

- 7.1 The Court will generally notify the parties of the date and time of the first directions hearing within seven days of the filing of the first defence and will give directions for the management of the proceeding at that first directions hearing.
- 7.2 At or shortly after the first directions hearing, the proceeding will usually be given a trial date and, with the exception of Regional Proceedings and proceedings involving contribution only, a pre-trial conference.
- 7.3 The parties are encouraged to seek agreement concerning proposed consent orders in advance of the first directions hearing, with a view to obtaining orders 'on the papers' and avoid the need for an appearance.
- 7.4 Requests for such orders are to be made using the *Request for Orders First Directions* form, which can be found on the List webpage of the Court's website. This form contains standard first directions for matters in the List. While parties may dispense with unnecessary directions or add additional directions, they are requested not to alter the wording of standard clauses without good reason.
- 7.5 Parties should email completed *Request for Orders First Directions* forms in both Word and signed PDF format to: dust.diseases@supcourt.vic.gov.au (cc. orders@supcourt.vic.gov.au) by **4.00pm two days prior to the hearing**. Requests received after that time may not be considered in time for the Court to excuse parties from attendance.

8 INTERLOCUTORY APPLICATIONS

- 8.1 Applications for nunc pro tunc orders and/or expedited trials should be made on summons and will generally be heard on Fridays in the Court sitting terms.
- 8.2 Other types of applications should generally be made on summons however in urgent cases the Court may dispense with the need for summons.

- 8.3 Where a proposed application is expected to exceed two hours, it may be listed as a special fixture or, in the first instance, for directions.
- 8.4 In order to obtain a hearing date, a party intending to make an application should complete the “Interlocutory Application Information Form” available on the List webpage and forward it to dust.diseases@supcourt.vic.gov.au
- 8.5 The Court will confirm whether a summons is required and will advise the hearing date of the application via email. In order to maintain the hearing date the applicant should file the summons (if required) and supporting affidavits within 48 hours of receipt of the Court’s advice of hearing date email. This email should be filed with the summons (if required) and should also be served on all parties together with the application materials.
- 8.6 Any written outlines of submissions should be no more than five pages and should be filed no later than the day before the application is to be heard.
- 8.7 To facilitate the Court’s preparation, hearing and determination of applications, parties are requested to email:
- soft copies of filed documents relating to the application and submissions; and
 - a hyperlinked list of authorities upon which they intend to rely to dust.diseases@supcourt.vic.gov.au

9 INTERROGATORIES

- 9.1 The number of interrogatories served in proceedings in the List should be limited to 30 (including sub-parts).

10 ORAL EXAMINATION

- 10.1 Parties wishing to arrange an examiner pursuant to Order 41 of the *Supreme Court (General Civil Procedure) Rules 2015*, should contact the Court’s Judicial Services Manager. Contact details are on the Court website.

11 PRE-TRIAL CONFERENCE

- 11.1 All proceedings, other than Regional Proceedings and contribution only proceedings, will be allocated a pre-trial conference (PTC) which will be conducted by a Deputy Prothonotary. Regional Proceedings may be listed for a PTC in Melbourne upon request.
- 11.2 The Court will allocate a PTC date to a proceeding in the first instance based upon a ‘not before’ date nominated by the parties.

- 11.3 Parties are required to provide at least two business days' notice via email to ptc@supcourt.vic.gov.au (copying all other parties) of any request for an adjournment of a PTC and provide reasons for the request. The Court publishes a PTC Calendar on the List webpage to assist parties wishing to reschedule a PTC.
- 11.4 Contribution only proceedings should be the subject of private mediation.

12 FINAL DIRECTIONS

- 12.1 Proceedings, other than Regional Proceedings, will be listed for a final directions hearing at which an appearance is compulsory by a person adequately briefed to address questions from the Bench as to the readiness of the proceeding for trial.
- 12.2 At the final directions hearing, parties will be expected to:
- confirm that the proceeding is ready for trial;
 - confirm the estimated number of sitting days;
 - confirm whether the proceeding is to be heard by judge alone, or by judge and jury;
 - confirm the name and contact details of the practitioner with conduct of the proceeding and advise whether counsel has been briefed for trial;
 - confirm payment of the trial fee and jury fee (if the trial is to be heard before a jury);
 - confirm that transcript has been arranged for the trial;
 - provide a list of proposed expert and lay witnesses to be called at trial¹;
 - advise whether any witnesses will require an interpreter or will need to give evidence via video-link;
 - advise whether a view is likely to be required during the trial;
 - advise whether any witnesses have special needs;
 - identify any outstanding interlocutory issues; and
 - identify the main issues in dispute.
- 12.3 At the final directions hearing, the Court will usually order that the parties file, prior to trial, a joint memorandum signed by counsel and/or the solicitor who has the primary conduct of the matter, and deliver a key documents folder to the trial judge's associate. Both the joint

¹ Note, witness lists must be electronically filed via RedCrest either before or immediately following the Final Directions Hearing

memorandum and the key documents folder are to be prepared jointly by the parties.

Joint memorandum

12.4 The purpose of the joint memorandum is to provide the trial judge with an overview of the case to be presented at trial by each party. It should not simply recite the pleadings, nor is it a substitute for proper pleadings. Rather, it should concisely set out:

- an overview of the claim and defences;
- any relevant procedural history, including settlements reached with other parties;
- the basic facts of the case, noting significant points of agreement and disagreement;
- the major issues that remain in dispute; and
- a short outline of the evidence each party intends to call. The outline should include the names of the witnesses, whether they are lay or expert and, in the case of experts, the witness's occupation/area of expertise.

12.5 As a guide, the joint memorandum should be no more than three to four A4 pages (with at least 1.5 line spacing); have numbered paragraphs; and contain subject matter headings.

Key documents folder

12.6 The key documents folder should contain a bare minimum of documents that are likely to be of assistance to the trial judge prior to the commencement of the trial. It should not resemble a traditional voluminous Court Book.

12.7 As a guide, the folder might include copies of:

- the current pleadings;
- the joint memorandum;
- relevant submissions;
- significant orders or rulings that have a direct bearing on the trial; and
- critical documents.

12.8 The key documents folder should not, as a matter of course, include overarching obligations certificates, affidavits of service, medical records, or tax documents.

12.9 The inclusion of a document in the key documents folder does not mean that the document must be tendered. Similarly, non-inclusion does not prevent a document from being tendered. If a document is to be

tendered, this will need to be done in the usual way and subject to the rules of evidence.

12.10 The plaintiff should prepare the folder as agreed between the parties and deliver one copy to the trial judge's associate and one copy to all other parties within the time ordered. Unless the trial is to proceed as an eTrial, the folder should be in the following format:

- loose-leaf (lever arch folder);
- double-side printed, (where practicable); and
- paginated.

12.11 The trial judge may be content for parties to provide an empty folder at the commencement of the trial with relevant material to be handed up as necessary during the course of the trial. If parties prefer to adopt this approach, they should contact the trial judge's associate to ascertain the trial judge's preference.

13 COMPLIANCE WITH ORDERS & ADJOURNMENTS OF TRIAL

13.1 If at any time the parties are unable to comply with the orders of the Court, they must notify dust.diseases@supcourt.vic.gov.au and request an extension of time.

13.2 Applications to adjourn trial dates should be made as soon as it is known that a matter is not ready to proceed as listed and should not be left until the final directions hearing.

14 REGIONAL PROCEEDINGS

14.1 Regional Proceedings are managed in the same way as other proceedings in the List subject to the following exceptions:

- Parties may request a telephone conference rather than appear at the first directions hearing.
- The trial will be listed in the relevant Supreme Court civil trial circuit unless a more urgent listing is required due to the plaintiff's state of health.
- Unless requested, a PTC will not be allocated and parties will instead be required to arrange a private mediation.
- Instead of a final directions hearing, the proceeding will be included in the callover for the relevant circuit. Parties should consult Practice Note SC CL 1 Civil Circuit List for information concerning callovers.

15 TRANSCRIPT

- 15.1 Practice Note SC Gen 7 is applicable to the requirements for transcript in relation to proceedings in the List.
- 15.2 For the purposes of Practice Note SC Gen 7, unless in a particular case parties are advised otherwise:
- 'Real-Time' transcript is not required for any proceeding in the List;
 - 'Running' transcript (as distinct from 'Real-Time' transcript and from 'Deferred' transcript) is required for all trials in the List; and
 - transcript is not required at all for directions hearings, interlocutory applications and call-overs.

16 USE OF TECHNOLOGY

- 16.1 The provisions of Practice Note SC Gen 5 Technology in Civil Litigation apply to proceedings in the List.
- 16.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

17 COMMUNICATIONS WITH THE COURT

- 17.1 Practitioners should consult Practice Note SC GEN 4 Custom and Protocol which sets out the general protocol for communications with the Court.
- 17.2 Email is the preferred form of communication in relation to proceedings in the List and the following protocols should be observed:
- Prior to a proceeding being allocated to the trial judge, emails are to be sent to dust.diseases@supcourt.vic.gov.au. Once parties have been informed of the name of the trial judge, communications should be directed to the trial judge's associate/s. Contact details for all associates are on the Court website.
 - Emails should maintain the same level of formality expected of all communications with the Court.
 - Unless the communication concerns an application to be made without notice, all parties must be copied in.
 - Emails, like any other correspondence with the Court, are not the appropriate forum for raising contentious issues, unless the Court has invited written submissions via email.

- 17.3 Under the Rules of Court, lawyers are required to provide the name and email address of an individual to whom reference can be made in respect of the proceeding on all court documents. Lawyers are expected to monitor email addresses provided and advise of any change of address in the same way as they would a mailing address.

18 FURTHER INFORMATION

- 18.1 The Court's website includes a page dedicated to the List with up to date information about its operation including:
- a) judicial officers managing the List;
 - b) this Practice Note in Word and PDF formats;
 - c) form for Request for Orders First Directions;
 - d) Interlocutory Application Information Form;
 - e) PTC Calendar.

AMENDMENT HISTORY

1 October 2018: This Practice Note was reissued on 1 October 2018 and amends the version issued on 22 March 2018.

22 March 2018: This Practice Note was reissued on 22 March 2018 with effect from 1 March 2018 and replaced former Practice Note SC CL 2 which was issued on 30 January 2017.

30 January 2017: This Practice Note was first issued on 30 January 2017 and replaced Practice Note No 10 of 2016 and *Notice to the Profession – Interlocutory Applications in the Personal Injuries and Dust Diseases Lists*.

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1 October 2018