

USER GUIDE: FIRST DIRECTIONS ORDERS DUST DISEASES LIST



The left section of this document contains a copy of the template first directions orders provided to parties for use in new Dust Diseases List proceedings. The right section contains comments and advice for parties and practitioners to refer to when completing their proposed orders for submission to the Court.

For any enquiries concerning the template orders, please contact dust.diseases@supcourt.vic.gov.au.

IN THE SUPREME COURT OF VICTORIA
COMMON LAW DIVISION
DUST DISEASES LIST

S ECI 2023 XXXXX

BETWEEN:

NAME OF THE PLAINTIFF

Plaintiff

and

NAME OF THE DEFENDANT

Defendant

Where there is only one or two defendants, type their names directly in the header here.

If the proceeding has more than two defendants, then only include the first defendant's name, followed by 'and others according to the schedule to the Writ'.

ORDER

JUDICIAL OFFICER: Judicial Registrar Baker

DATE MADE:

There is no need to add a date here. It will be filled when the order is made.

ORIGINATING PROCESS: By writ filed Click or tap to enter a date..

HOW OBTAINED: By consent pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015* ('the Rules')

ATTENDANCE: Not applicable.

OTHER MATTERS:

THE COURT ORDERS BY CONSENT THAT:

Ensure all dates in this section are weekdays and not weekends or public holidays.

Nunc pro tunc

1. The plaintiff have leave to proceed nunc pro tunc pursuant to subsection [135BB(3) *Accident Compensation Act 1985* (Vic)] OR [357(3) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)]

Applications for orders 1 and/or 2 are to be made on summons.

Remove inapplicable Act in order 1.

Trial and trial fees

2. The proceeding is granted an expedited trial.
3. The proceeding is set down for trial not before [Click or tap to enter a date.](#) before a [Choose an item.](#) on an estimate by the parties that the trial will occupy **XX** sitting days.
4. In order to secure the trial date, the setting down and hearing fees are to be paid in accordance with the *Supreme Court (Fees) Regulations 2018* (Vic). Where applicable, the first day jury fee is to be paid at the same time as the setting down fee.
5. Any application to adjourn or vacate the trial date must be made as soon as it is known that the trial is not ready to proceed.

If an application has been granted.

Ensure an estimate for the trial duration is included here.

Amendments to the timetable

6. For all interlocutory steps occurring prior to the post-mediation directions hearing, the parties may extend or abridge such dates in the interlocutory timetable by consent in accordance with rule 3.02(3) of the Rules without seeking further orders of the Court.

Pleadings and particulars

7. The defendant is to file and serve a defence by [Click or tap to enter a date.](#).
8. The parties are to make any request for further and better particulars by [Click or tap to enter a date.](#).
9. The parties are to file and serve any further particulars required within 28 days of receipt of the request for further and better particulars.
10. The defendant is to file and serve any third party notices by [Click or tap to enter a date.](#).
11. The defendants are to file and serve any notices of contribution by [Click or tap to enter a date.](#).

If a document such as a defence has already been filed then the relevant paragraph can be removed.

Paragraph 11 should be deleted if there is only one defendant in the proceeding.

Discovery and interrogatories

12. All parties are to make discovery (including full inspection) in accordance with the Rules and file and serve an affidavit of documents by [Click or tap to enter a date.](#).
13. If parties wish to interrogate, they are to file and serve interrogatories for the examination of another party by [Click or tap to enter a date.](#).
14. Answers to interrogatories are to be filed and served in accordance with the Rules.

Order 41 Examination – De Bene Esse

Delete this section where the proceeding relates to contribution only.

15. Rule 41.01(2) of the Rules is dispensed with.
16. The plaintiff has leave to be examined on oath or affirmation before an examiner to be appointed by the Court.
17. Any such examination is to occur at a time and place to be agreed upon by the parties in consultation with the Court and subject to the plaintiff's health, condition and whereabouts but, in any event, is to be concluded by 2 clear business days prior to the trial date..
18. For the purposes of Rule 41.07(1) of the Rules, the plaintiff is to arrange for an audio-visual recording and transcript of the examination.
19. The examination is otherwise to be conducted in accordance with Order 41 of the Rules..
20. The costs of the examination, including the examiner's fees and travelling and/or accommodation expenses, are to be borne in the first instance by the plaintiff and, subject to any subsequent order, are ultimately to be costs in the proceeding.

Evidence

21. Any subpoena under Order 42A of the Rules is to be issued and served by no later than eight weeks prior to the trial date.
22. The parties are to exchange any medical and/or expert reports concerning damages and liability, including those required to be served under Order 33 or Order 44 of the Rules, by [Click or tap to enter a date](#)..
23. The plaintiff is to serve particulars of special damages, loss of earnings and loss of earning capacity, along with supporting documentation by [Click or tap to enter a date](#)..
24. No later than [Click or tap to enter a date](#) :
 - a. the parties are to exchange any supplementary medical and expert reports concerning damages and liability from experts or medical practitioners whose reports have previously been served in the proceeding, along with supporting documentation; and
 - b. the plaintiff is to serve any final particulars of special damages, loss of earnings and loss of earning capacity.

Mediation and post-mediation directions hearing

25. The parties are to have attended a mediation of the proceeding by [Click or tap to enter a date](#)..
26. Within 3 days prior to the date for the mediation, the legal practitioners for the defendants are to confer, by telephone or in conference, for the

Delete this section if the matter has an expedited trial.

Paragraph 26 should be deleted if there is only one defendant in the proceeding.

purpose of addressing the issue of contribution of their respective clients towards any resolution of the plaintiff's claim.

27. The parties are to notify the Court of the status of the proceeding within seven days of the mediation.

28. Should the proceeding not resolve at mediation, the parties are to attend a post-mediation directions hearing on [Click or tap to enter a date](#). **(Court use only)**.

Parties are not required to insert a directions hearing date; this will be allocated by the Court.

29. At least 2 days prior to the post-mediation directions hearing, the parties are to file a list of witnesses.

30. At the post-mediation directions hearing, the parties are to advise the Court:

- a. whether the court ordered timetable has been complied with;
- b. what issues remain in dispute;
- c. whether it is proposed to seek leave to amend any pleading or join further parties;
- d. whether the initial estimate of the length of the trial requires adjustment;
- e. the areas or issues in respect of which each party intends to adduce expert evidence;
- f. the utility of experts conducting a conference or preparing a joint report, if appropriate; and
- g. whether it is proposed to seek leave to rely upon expert reports not served in accordance with these orders.

Pre-trial conference and final directions hearing

31. The parties are to attend [Choose an item](#) no later than 7 days before the final directions hearing.

This section is for expedited trial matters only.

32. Within 3 days prior to the date for the conference, the legal practitioners for the defendants are to confer for the purpose of addressing the issue of contribution of their respective clients towards any resolution of the plaintiff's claim.

Paragraph 32 should be deleted if there is only one defendant in the proceeding.

33. Should the proceeding not resolve at the conference, the parties are to attend a final directions hearing on [Click or tap to enter a date](#). **(Court use only)**.

Parties are not required to insert a directions hearing date; this will be allocated by the Court.

34. At least 2 days prior to the final directions hearing, the parties are to file a list of witnesses.

35. For the purposes of the final directions hearing, each party should be in a position to:

- a. confirm that the proceeding is ready for trial;
- b. confirm the estimated number of sitting days;

- c. confirm whether the proceeding is to be heard by judge alone, or by jury;
- d. advise whether counsel has been briefed for trial;
- e. confirm payment of the trial fee and jury fee (if the trial is to be heard before a jury);
- f. address the Court on the expert and lay witnesses to be called at trial;
- g. advise whether any witnesses will require an interpreter or will need to give evidence via video-link;
- h. advise whether any witnesses have special needs;
- i. advise whether a view is likely to be required during the trial;
- j. identify any outstanding interlocutory issues; and
- k. identify the main issues in dispute.

Costs

36. Costs in the proceeding.

Consent of the parties

Signature

 Solicitors for the Plaintiff
 Date: Click or tap to enter a date.

Signature

 Solicitors for the Defendant
 Date: Click or tap to enter a date.

Type the name of the relevant firm or practitioner, or insert an image signature or stamp. No separate signed PDF file is required if all parties sign the Word document.