



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 was issued and commences on 30 January 2017 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:
 - a) Aluminosis;
 - b) Asbestosis;
 - c) Asbestos induced carcinoma;
 - d) Asbestos related pleural diseases;

- e) Bagassosis;
 - f) Berylliosis;
 - g) Byssinosis;
 - h) Coal dust pneumoconiosis;
 - i) Farmer's lung;
 - j) Hard metal pneumoconiosis;
 - k) Mesothelioma;
 - l) Silicosis;
 - m) Silico-tuberculosis; and
 - n) 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 of the nature set out in paragraphs 4.1 to 4.3 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 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.
- 5.3 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.
- 5.4 No additional fees will be payable for the inclusion of a proceeding in the 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@supremecourt.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@supremecourt.vic.gov.au.

7 FIRST DIRECTIONS

- 7.1 The Court will give directions for the management of a proceeding in the List at a first directions hearing. Parties will generally be notified of the date and time of the first directions hearing by the Court within seven days of the filing of the first defence.
- 7.2 At or shortly after the first directions hearing, the proceeding will be given a trial date and, with the exception of Regional Proceedings, 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 by consent without the need for an appearance.
- 7.4 Requests for such orders are to be made using the *Request for Consent Orders Pursuant to Rule 59.07 First Directions* form, a link to which can be found on the [Dust Diseases 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 asked not to alter the wording of individual standard clauses without good reason.
- 7.5 Parties should email completed *Request for Consent Orders Pursuant to Rule 59.07 First Directions* forms in both Word and signed PDF format to: dust.diseases@supremecourt.vic.gov.au (cc. orders@supremecourt.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 attending a directions hearing.

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 by the Judge in Charge 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, or is urgent, it may be listed as a special fixture or for directions.
- 8.4 In order to obtain a return date, a party intending to make an application should complete the "Interlocutory Applications Information Form" available on the [List webpage](#) and forward to dust.diseases@supremecourt.vic.gov.au.
- 8.5 The Court will confirm whether a summons is required and will advise the return date for the proposed application via email. In order to maintain the return date the applicant should file the summons (if required) and supporting affidavit within 48 hours of receipt of the Court's confirmation. The Court's confirmation should be provided to Principal Registry upon filing and served on all parties together with the summons (if required) and supporting material.

- 8.6 Exhibits should be filed with the affidavit but should not be stapled to it.
- 8.7 Any party to an application may provide a written outline of submissions, which should be filed no later than the day before the application is to be heard. An outline of submissions is not to exceed five pages in length. Outlines of submissions should be filed with the Principal Registry. If filed on the day before the hearing a copy should also be sent by email to dust.diseases@supremecourt.vic.gov.au.

9 INTERROGATORIES

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

10 ORAL EXAMINATION

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

11 PRE-TRIAL CONFERENCE

- 11.1 All proceedings, other than Regional Proceedings, will be allocated a pre-trial conference (PTC) which will be conducted by a Deputy Prothonotary.
- 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@supremecourt.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 details of PTC listings on the [Dust Diseases List webpage](#) of its [website](#) to assist parties wishing to reschedule a PTC. As a guide to parties seeking an alternative date, the Court generally lists two PTCs each weekday (10am and 2pm).

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 As part of final directions, parties will usually be ordered to file a joint memorandum identifying the factual and legal issues in dispute and to prepare a folder of key documents for the assistance of the Trial Judge. Court Books are not required.

13 COMPLIANCE WITH ORDERS

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

14 REGIONAL PROCEEDINGS

- 14.1 Regional Proceedings are managed in the same way as other proceedings in the List subject to the following exceptions:
- 14.1.1 Parties may request a telephone conference rather than appear at the first directions hearing.
- 14.1.2 The trial will be fixed in the relevant Supreme Court civil trial circuit.
- 14.1.3 Unless requested, a PTC will not be allocated and parties will instead be required to arrange a private mediation.
- 14.1.4 A Final Directions Hearing will not be listed; however, the proceeding will be included in the call-over for the relevant circuit. Parties will be advised of the date for call-over by the Court and may request to appear via video link.

15 USE OF TECHNOLOGY

- 15.1 The provisions of Practice Note SC Gen 5 “Guidelines for the Use of Technology” apply to proceedings in the List.
- 15.2 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.

16 COMMUNICATIONS WITH THE COURT

- 16.1 At all stages of the proceeding, communications with the Court should be by email with a copy to all other parties, and should be confined to uncontroversial matters.
- 16.2 Communications should be directed to dust.diseases@supremecourt.vic.gov.au (prior to the case being allocated to a Trial Judge) or to the associate to the Trial Judge (once allocated). Contact details for all associates are on the Court website.
- 16.3 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*, all court documents must include the name and email address of an individual to whom reference can be made in respect of the proceeding.

17 FURTHER INFORMATION

- 17.1 The Court’s website (www.supremecourt.vic.gov.au) includes a [page dedicated to the List](#) with up to date information about the operation of the List including:

- a) Judicial officers managing the List;
- b) This Practice Note in Word and PDF formats;
- c) Form for request for consent orders pursuant to r 59.07;
- d) Interlocutory Applications Information Form referred to in paragraph 8.4.

AMENDMENT HISTORY

30 January 2017: This Practice Note was 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*.

Vivienne Macgillivray
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30 January 2017