CASE MANAGEMENT AND LISTING UPDATES
DUST DISEASES LIST

As amended 30 May 2024

In response to the substantial and sustained growth experienced in the Supreme Court's injury-based lists over the past two years, the Court is modifying its case-management and listing practices. The changes described below are intended to enable the Court to manage larger numbers of proceedings than has previously been required, while also allowing proceedings to reach trial faster than has more recently been possible.

Expedited trials and urgent applications

The Court's approach to urgent proceedings will be largely unchanged. Parties should continue to apply for expedited-trial orders on summons, supported by appropriate medical evidence, as circumstances require.

If a plaintiff's legal representatives know before commencing a proceeding that an expedited trial application will be necessary, they are encouraged to issue that application at the same time as, or as early as possible after, issuing the writ and seek an appropriate return date. Return dates provided by the registry will be able to be adjusted to account for the expected timing of defendants' appearances, if they have not been filed by that stage.

Depending on the stage at which an application for an expedited trial is made, a proceeding in the Dust Diseases List may already have been allocated a standardised timetable in accordance with the process set out below. An order vacating the previously-set timetable and trial date will be included in any orders made following a successful application for an expedited trial.

Pre-trial conferences will no longer be included in the Court's standard timetabling orders for expedited trials. Instead, an order will be made providing a date by which the parties are to have attended a mediation or informal settlement conference. Pre-trial conference orders can still be made on application by a party, on a case by case basis.

To provide greater clarity for parties concerning how late expert material will be dealt with, and to reduce the risk of urgent trial dates being jeopardised due to late service of such material, additional orders will be included in the Court's standard timetabling orders for expedited matters, requiring that all further expert reports are to be served by no later than 7 days after the mediation or informal settlement conference occurs. After this date, leave of the trial judge will be required for a party to be permitted to rely on a further expert report.

Trial dates

The Court has a target of having all non-urgent cases in the Dust Diseases List reach trial within 12 months of an appearance first being filed. To support this, and the increased number of proceedings being issued in the Common Law Division more broadly, the Court is increasing the number of trials that it can list each week,

and is taking steps to eliminate certain categories of administrative work involved in the early stages of claims.

Trial dates for urgent claims will continue to be allocated based on the medical evidence available and the parties' positions.

Joinder of Parties

Where the application to join a defendant is with the consent of existing parties, such applications will generally be considered on the papers. A proposed amended statement of claim is required but in most cases a summons and affidavit will only be required where the joinder is opposed. This includes applications for joinder of companies that have been deregistered where an application for reinstatement pursuant to the Corporations Act has not yet been commenced, In those cases it is anticipated the application to reinstate the company, where necessary, will be heard and determined prior to the listed trial date. A proposed pleading and minute of consent should be emailed to dust.diseases@supcourt.vic.gov.au

Timetables for non-urgent claims

Interlocutory timetables will no longer be sought from the parties by the Court at the outset of a proceeding. Instead, upon the filing of a notice of appearance in a proceeding, the Court will issue a timetable (including a trial date and post-mediation directions hearing date) to the parties using a standardised timetable that will apply to all non-urgent cases initiated in the Dust Diseases List. If orders for an expedited trial are subsequently made, the standardised timetable will be replaced by the parties' expedited timetable.

Parties remain free to extend or abridge dates in the standardised timetable that occur prior to the post-mediation directions hearing by agreement without seeking orders from the Court, consistent with existing practices. Parties also have the option of requesting that a first directions hearing be listed to discuss any issues specific to a particular case. First directions hearings will not be listed as a matter of course for all proceedings, however.

The standard timetable for non-urgent Dust Diseases List proceedings will involve the following timeframes:

- Defences and any replies are to be filed in accordance with the Rules.
- Requests for further and better particulars are to be made within 28 days of service of another party's pleading, and any responses are to be served within 28 days of receipt of such a request.
- Third-party notices and notices of contribution are to be issued within 3 and 6 months, respectively, of the initial timetabling orders being made.
- Discovery is to be completed 3 months after the initial timetabling orders, and any interrogatories are to be served 1 month later.
- All parties' medical/expert reports, and the plaintiff's particulars of special damages, are to be exchanged 3 months after the date for service of any interrogatories
- Mediation is to occur two months after the exchange of expert materials and the plaintiff's particulars of special damages, and a post-mediation directions hearing will be listed approximately 2-3 weeks later.
- The proceeding will be allocated a trial date approximately 2-3 months after the post-mediation directions hearing.

Finalisation of proceedings

Parties are expected to notify the Court promptly when a proceeding resolves ahead of trial.

Upon receipt of such notice, the Court will no longer list administrative mentions some months into the future after existing hearing dates are vacated, but instead will list a mention before a judge several weeks later. Parties will be expected to have submitted consent minutes to dismiss the proceeding by that stage, or else appear at that mention if they wish to submit that the proceeding should not be dismissed.

Conduct of parties and practitioners

These changes will require some modifications to the manner in which practitioners conduct proceedings. In particular:

- By the time they serve a writ, practitioners in non-urgent cases should expect to be ready to participate in a mediation around 10 months later, and ready to proceed to trial within approximately 2 months thereafter. This may require practitioners to make arrangements in relation to expert bookings or other investigations earlier than is presently the case.
- The Court expects practitioners, including counsel briefed on an application, to confer before the hearing of any application to resolve or narrow the issues in dispute. Failure to meet this expectation may be relevant to orders made on an application, including as to costs.
- In non-urgent cases, applications concerning pleadings, discovery, interrogatories or subpoenas are expected to be made in sufficient time to enable them to be determined before the mediation. If a party considers that such an application is required, it should not be left until after the mediation unless there are exceptional circumstances.
- Adjournments of directions hearing dates will not routinely be allowed more than once, and will not be granted for periods of more than one month in the absence of an application. It is the Court's expectation that mediation (or another ADR process) will be held prior to the post-mediation directions hearing and final directions hearing. Post-mediation directions hearings will not be adjourned to any later than two months before the trial date, regardless of whether a mediation has yet been held.
- Particularly in non-urgent cases, there is only limited scope for parties to seek leave to serve new expert evidence after a mediation or other ADR process has occurred. Practitioners should prepare cases on the assumption that they will be expected to have served all expert reports on which they intend to rely prior to the mediation, and applications to rely on new expert material after the conclusion of a mediation should generally be confined to areas or topics that relate to new developments which could not have been anticipated in advance. A desire to save costs by not commencing the preparation of expert material until after a mediation will generally not be considered an acceptable reason.

None of the above is intended to discourage parties from conducting informal settlement conferences or early mediations prior to the court-ordered mediation, if the parties consider this desirable or appropriate in order to reduce costs.