



Dust Diseases Injuries List Users Group Meeting - 25 May 2016

Key Points Bulletin

On 25 May 2016 Her Honour Justice Rita Zammit, the Judge in Charge of the Dust Diseases List, chaired a meeting of representatives of law firms and members of the Bar who frequently appear in this List. The following Key Points emerging from that meeting are offered for the benefit of users of the List generally.

Practitioners are encouraged to provide feedback concerning any of these issues or other issues concerning the general management of cases in the List to Kate Clark, Deputy Registrar – Common Law: kate.clark@supcourt.vic.gov.au

1. Review of Practice Note

- All Supreme Court Practice Notes will undergo review in 2016 and a new Practice Note for this List is due for publication in September. PN No.2 of 2015 is unlikely to undergo any significant changes although regional dust disease claims will henceforth be managed in this List rather than the Civil Circuit List. Practitioners should consult the Dust Diseases page of the Court's website <http://www.supremecourt.vic.gov.au/home/law+and+practice/specialist+areas+of+law/dust+diseases/> for the most up-to-date practice information.

2. Directions and interlocutory applications

- The Court's requirement that requests for consent minutes ahead of Friday directions hearings be submitted by 4pm on Wednesdays appears to be saving time and cost for practitioners as Court staff have more time to process requests for orders on the papers, thereby avoiding the need for attendance on the day. The Court acknowledges that matters in this List are often unpredictable and will endeavour to accommodate requests for consent orders after the deadline. Requests for adjournments must however be adequately explained.
- While the Court may be prepared to dispense with the formality of a summons in urgent cases (save for expedited trial applications themselves), non-urgent applications should be made on summons supported by affidavit material.
- Interlocutory applications are now listed in Court 1, William Cooper Justice Centre.
- Justice Zammit expressed concern over the number of applications on Day 1 of trial, e.g. to amend pleadings and flagged that trial judges will be cracking down on this.

3. Pre-trial conferences

- The Court is concerned with the number of requests for adjournment of pre-trial conferences with figures indicating that over 50% were adjourned in the current financial year. This causes logistical and resourcing issues for the Court, particularly when adjournments are requested at late notice and the offering of this service to practitioners (in place of a court ordered mediation) is under review.

- Practitioners indicated that they valued this service and would endeavour to provide more notice if an adjournment was required.
- The Court is considering ways of better managing pre-trial conferences including changes to wording of standard orders to allow more flexibility in the timing of conferences and will investigate the possibility of a public calendar to make rescheduling easier.
- Justice Zammit confirmed that if there were difficulties in completing a court appointed conference, it was acceptable for parties to hold their own informal conference and to advise the Court once that had been completed.

4. Management of regional proceedings

- The Court has determined to manage regional dust cases in this List rather than the Civil Circuit List however matters will still be listed for trial in the relevant circuit. Unless requested by the parties, regional dust cases will not be listed for a Pre-Trial conference.

5. Final directions and immediate pre-trial preparation

- The Court is considering the abolition of Court Books in the Dust Diseases List in favour of the filing of key documents for the assistance of the trial judge.
- Joint memoranda of issues are being ordered in some cases. These must be signed by counsel or the solicitor running the file. Practitioners were reminded that this document is for the benefit of the trial judge and is not a replacement for pleadings.
- In response to concerns raised by a practitioner about Final Directions Hearings being too far out from trial, Justice Zammit noted that the Court was open to practitioners requesting a shorter timeframe.

6. Technology

- The Court is exploring the possibility of conducting eTrials in document heavy cases although noted that dust cases do not tend to fall into this category.

7. Section 134AB(30) costs applications

- These applications are now dealt with by Judicial Registrar Ware instead of Associate Justice Daly and the Court's requirements concerning supporting material for such applications are under review. Such applications are often made after final orders dismissing a proceeding and this is causing issues for the Court. It was suggested that plaintiff practitioners include liberty to apply for such orders (where relevant) when seeking final orders in respect of the claim against the defendant.

8. Contact details on court documents

- Practitioners were reminded of Rules 27.03(8)(c) and 27.03(11)(b) which require the name and email address of an individual within a firm who can be contacted in respect of a proceeding to be included on court documents. Registry staff have been instructed to reject documents which do not comply with these rules which facilitate important communications between the Court and legal representatives, particularly where a large firm is involved.

9. Listing of trials

- In response to a concern from a practitioner about having multiple dust disease trials on the same day, Justice Zammit explained the Court's practice of listing such matters on a Wednesday on the basis that this seemed to optimise the chance of having a trial judge available. Her Honour noted the Court was open to requests by consent for trial dates to be moved.