



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC/EEap1762746

24 July 2019

A/Director, Civil Law
Justice Strategy and Policy
NSW Department of Justice
GPO Box 31
Sydney NSW 2001

By email: policy@justice.nsw.gov.au

Dear Ms Ginnivan,

Proposed Dust Diseases Tribunal Regulation 2019

Thank you for the opportunity to comment on the proposed Dust Diseases Tribunal Regulation 2019 ("the proposed Regulation"). The Law Society's Injury Compensation Committee has contributed to this submission.

The Law Society supports Option 3 contained in the Regulatory Impact Statement and considers remaking the *Dust Diseases Tribunal Regulation 2013* with amendments is a suitable approach, subject to our specific comments outlined below.

1. Ensure that urgent claims are removed from the CRP in appropriate circumstances.

The Law Society has previously noted difficulties for claimants with obtaining even short written reports from a treating doctor in circumstances where a report is urgently required to substantiate the deterioration of their condition.¹

We support the amendment contained in proposed subclause 20(9), which would enable evidence of a medical opinion that has been given orally, to be produced by means of an affidavit by a person who has heard that evidence. This amendment would provide the Tribunal with greater discretion about the evidence it can consider when determining whether a claim is urgent.

While we consider subclause 20(9) would address the concerns we raised previously, we query whether insertion of proposed subclause 20(10) is necessary. Subclause 20(10) would enable evidence to be given, by means of an affidavit by any person, regarding the claimant's age, nature of the claimant's condition, the date the condition was diagnosed and whether the claimant is receiving palliative treatment. We are concerned such evidence would not be sufficiently probative, noting it would not necessarily emanate in a meaningful way from a medical practitioner's opinion.

¹ The Law Society of New South Wales and Australian Lawyers Alliance, *Joint submission: Review of the Dust Diseases Tribunal Regulation 2013 – staged repeal process* (27 April 2018) <<https://www.lawsociety.com.au/sites/default/files/2018-06/Review%20of%20the%20Dust%20Diseases%20Tribunal%20Regulation%202013%20-%20staged%20repeal%20process%20-%2027%20April%202018.pdf>>.

The Law Society also recommends clause 20 be drafted to enable any party to make an application to have a claim removed from the Claims Resolution Process ("CRP") on the ground the claim is urgent.

2. Clarify the application of first direction hearing fees

The Law Society makes no comment on this proposal.

3. Introduce a case management power to enable the Tribunal to manage inactive claims within the CRP

The Law Society supports this proposal.

4. Clarify the application of the CRP to joinder of additional defendants

The Law Society supports this proposal.

5. Introduce a time limit for defendants to challenge a contribution assessment determination

We agree there should be a time limit for defendants, cross claimants and cross defendants to challenge apportionments. However, we note there can be a considerable delay between the making of a contribution assessment determination ("CAD") and the resolution of the original plaintiff's action. For example, an original plaintiff may die after a CAD is issued, and the consequent estate claim may not be resolved for many months. For this reason, the Law Society recommends the proposed 12-month period within which to challenge apportionment should run from the date the Tribunal enters orders giving effect to the CAD pursuant to clause 56.

6. Clarify the application of Division 6 to claims for contribution made outside the timeframe for cross claims

The Law Society supports this proposal.

7. Enable the Tribunal to charge for record searches and records produced from another court

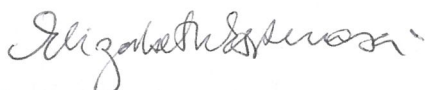
The Law Society makes no comment on this proposal.

8. Other minor amendments

The Law Society supports the proposed changes.

Thank you again for the opportunity to comment on the proposed Regulation. Should you have any questions or require further information, please contact Adi Prigan, Policy Lawyer, on (02) 9926 0285 or email adi.prigan@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President