



DUST DISEASES TRIBUNAL OF NSW

ADVICE TO PRACTITIONERS (No. 2 of 2025)

NOTIFICATION OF FINAL DETERMINATION OF PROCEEDINGS

Icare has requested that the Tribunal remind practitioners of their obligations pursuant to [Schedule 1A of the *Workers' Compensation \(Dust Diseases\) Act 1942 \(NSW\)*](#) to notify the Dust Diseases Authority of the final determination of proceedings.

A copy of Schedule 1A of the *Workers' Compensation (Dust Diseases) Act 1942 (NSW)* is attached below.

Daniel Watson
Registrar
8 July 2025

Workers' Compensation (Dust Diseases) Act 1942 No 14

Current version for 18 October 2022 to date (accessed 3 July 2025 at 10:40)

Schedule 1A

Schedule 1A Reimbursement of compensation from negligent third parties

(Section 8E)

1 Application of Schedule

This Schedule applies to proceedings referred to in section 8E for damages in respect of disablement or death that—

- (a) were commenced on or after 1 January 2002, or
- (b) were commenced before 1 January 2002 but were not finally determined before that date.

2 Definitions

In this Schedule—

first person and **second person** have the same meanings as in section 8E (3).

3 Notification of final determination of proceedings

- (1) A person (**the defendant**) against whom proceedings to which this Schedule applies have been taken must notify the Authority in writing of any award, judgment, settlement or agreement resulting in the final determination of the proceedings.
- (2) The notification must be given to the Authority within 28 days after the final determination.
- (3) The notification must be accompanied by the following documents—
 - (a) a document or documents that set out the following particulars—
 - (i) the name, address and date of birth of the person who commenced the proceedings (and if more than one, those particulars for each person),
 - (ii) a statement as to whether or not the defendant was sued in the capacity of employer,

- (iii) a statement as to whether or not the defendant has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
 - (iv) the amount and extent of any such contribution or other payment,
 - (v) if a contribution or other payment (as referred to in subparagraphs (iii) and (iv)) has been or is to be made—a statement as to whether or not an amount has been deducted from the contribution or payment as referred to in section 8E (3) (b),
 - (vi) the amount and extent of any such deduction,
 - (vii) the names and addresses of all parties to the award, judgment, settlement or agreement,
 - (viii) a statement as to whether or not any person against whom the proceedings were brought (other than the defendant) has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
 - (ix) the amount and extent of any such contribution or other payment,
 - (x) if a contribution or other payment (as referred to in subparagraphs (viii) and (ix)) has been or is to be made—a statement as to whether or not an amount has been deducted from the contribution or other payment as referred to in section 8E (3) (b),
 - (xi) the amount and extent of any such deduction,
- (b) a copy (whether in electronic or hard copy form) of the following documents—
- (i) the final statement of claim in the proceedings,
 - (ii) the final particulars of damage filed by the person or persons who commenced the proceedings,
 - (iii) any award, judgment, terms of settlement, agreement, or other document (such as a deed of release) evidencing the terms of the final determination of the proceedings.
- (4) It is sufficient compliance with subclause (3) (a) to the extent that documents provided under subclause (3) (b) contain the particulars required by subclause (3) (a).
- (5) Where there is more than one defendant in proceedings to which this Schedule applies, each defendant is required to comply with this clause. In such a case, the Authority may consent to a defendant complying with this clause on behalf of other defendants in the proceedings.

- (6) The Authority may at any time by notice in writing require a defendant in proceedings to which this Schedule applies to provide to the Authority, within 21 days or such longer period as the Authority may allow, specified information or documents concerning the determination of the proceedings.
- (7) A person who fails to comply with a requirement imposed by or under this clause is guilty of an offence.

Maximum penalty—10 penalty units.
- (8) The Authority may exempt any particular proceedings or class of proceedings from the requirements as to notification under this clause. Any exemption given for a class of proceedings is to be publicised in a manner determined by the Authority and any revocation or variation of such an exemption must be similarly publicised.

4 Determination of amount of compensation

In a case in which the deduction from damages referred to in section 8E (3) (b) is not apparent or readily ascertainable from the terms of any judgment or award in respect of the damages, the amount of the deduction is the amount determined in accordance with, and subject to, the following principles—

- (a) Subject to the following paragraphs, the amount of compensation (the **deducted compensation**) taken to have been deducted from the damages payable by the second person to the first person is the total of the following amounts as assessed by the Authority—
 - (i) the amount of compensation paid by the Authority to, or on behalf of, the first person up to the date of final determination,
 - (ii) the present value of future benefits payable by the Authority to, or on behalf of, the first person after that date (where the assessment of those future benefits is based on the assumption that the medical condition of the worker as to disablement and life expectancy will remain unchanged),

less any reduction required by section 8E (6).

- (b) The Authority may by notice in writing served on the second person give the second person notice (an **assessment notice**) of the amount of the deducted compensation assessed by the Authority under paragraph (a). An assessment notice must include the Authority's method of calculation and reasons for the assessment.

Note—

When assessing the amount of the deducted compensation under paragraph (a), the Authority does not include any damages for non-economic loss.

- (c) If a second person disputes the assessment of an amount of deducted compensation set out in an assessment notice, the second person may request that the Authority

reconsider the assessment (a **reconsideration request**).

- (d) A reconsideration request must—
 - (i) be in writing in the form approved by the Authority, and
 - (ii) be lodged with the Authority within 28 days after the service on the person of the assessment notice.
- (e) In reconsidering an assessment, the Authority may consider the advice of accountants, actuaries, legal practitioners and other persons.
- (f) Following the reconsideration of the assessment, the Authority may—
 - (i) confirm the original assessment of the amount of the deducted compensation made under paragraph (a), or
 - (ii) if the Authority considers that a lesser amount of deducted compensation is appropriate—issue an amended assessment notice setting out that lesser amount.
- (g) As soon as practicable (and in any event within 28 days) after the lodgment of a reconsideration request, the Authority must notify the second person in writing of the outcome of the reconsideration. The notification must include the Authority's reasons for its decision following the reconsideration.
- (h) The second person is not entitled to make more than one reconsideration request in relation to an amount of deducted compensation.

5 Interest

- (1) Interest is payable on an amount that the second person is liable to pay under section 8E (3) (e) at the rate prescribed for the time being under section 101 of the [Civil Procedure Act 2005](#) with respect to the payment of interest on a judgment debt.
- (2) That interest begins to run from—
 - (a) in a case in which the deduction from damages referred to in section 8E (3) (b) is apparent or readily ascertainable from the terms of any judgment or award in respect of the damages—the date of expiry of the 42 day period referred to in section 8E (3) (d), or
 - (b) in any other case—
 - (i) if the second person has not lodged a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—the date of expiry of the 42 day period referred to in clause 6 (a) (being 42 days after the service of an assessment notice referred to in clause 4 (b)), or
 - (ii) if the second person has lodged a reconsideration request before the expiry of

the 28 day period referred to in clause 4 (d) (ii)—the date of expiry of the 28 day period referred to in clause 6 (b) (being 28 days after the second person is notified by the Authority of the outcome of the reconsideration).

- (3) If the Authority has issued an amended assessment notice in accordance with clause 4 (f) (ii), the amount of interest is to be calculated on the amount of deducted compensation set out in that amended notice.

6 Reimbursement period

For the purposes of section 8E (3) (d), in a case in which the deduction from damages referred to in section 8E (3) (b) is determined in accordance with clause 4, an amount that the second person is liable to pay to the Authority under section 8E (3) must be paid—

- (a) if the second person does not lodge a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—within 42 days after the service of the assessment notice determining the amount of compensation, or
- (b) if the second person lodges a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—within 28 days after the second person is notified by the Authority of the outcome of the reconsideration.