

EXPLANATORY MEMORANDUM TO ACCOMPANY PRACTICE NOTE 3/06

Section 93D Proceedings

A number of difficulties have arisen in the efficient management of referrals made by injured workers pursuant to the provisions of s.93D of the Act. These difficulties are largely occasioned by the lack of uniformity in the method of compliance with Rule 74(2) both as to time and content. The aim of this practice note is to make the practice uniform as to both time of and method of compliance with the Rule and to enable the Registry to have a fixed date to work from for the forward programming of disputes which arise under s.93D(8).

The medical evidence filed with the Form 22 referral is filed pursuant to the administrative procedure laid down by s.93D(5) in which regard practitioners are referred generally to my comments in *Machforce Pty Ltd v Twaites* C4/2006. The dispute does not arise until the conditions set out in s.93D(8) have been met. The Rules seek to manage the resolution of the **dispute** (ie not the referral) and hence documents filed with the Form 22 referral are limited to satisfying the Director of the relevant level of disability and have no status in the dispute, the documents in respect of which are regulated by Rule 74(2). In a great many instances, documents quite unrelated to the referral are being filed with the referral and the practice note seeks to address this problem.

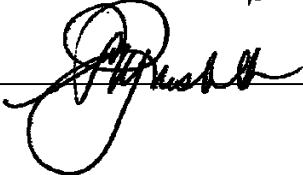
Accordingly practitioners and agents representing injured workers seeking access to common law should be aware that the documents filed with the Form 22 referral will not be admitted as of right in any conciliation or hearing of the dispute unless in all other respects they comply with the Rules.

PRACTICE NOTE – SECTION 93D PROCEEDINGS

PRACTICE NOTE No 3/06

1. Where a worker files a Form 22 referral, only documents relevant to that referral are to be filed with it.
2. Compliance with Rule 74(2) shall be effected by the worker filing one book only of documents which must be indexed and, if it comprises more than 12 pages including the index, paginated.
3. The book of documents must not be filed until after the dispute has arisen under s.93D(8).
4. Once the book has been filed the Director will not accept any other documents save for medical reports by medical practitioners whose reports are previously accepted and are only filed for the purpose of updating the information already provided.
5. Following service of the book of documents in conformity with Rule 74(2) and practice note 1 above, the worker must file a Certificate of Service within 7 days in the approved form.
6. Compliance with Rule 75 shall be effected by the employer filing one book only of documents which must be indexed and, if it comprises more than 12 pages including the index, paginated.
7. Once the book has been filed the Director will not accept any other documents save for medical reports by medical practitioners whose reports are previously accepted and are only filed for the purpose of updating the information already provided.
8. The exclusion of Rule 26 by Rule 72 does not apply to interlocutory applications, applications for costs or assessments of costs or any other application in the nature of an interlocutory application, all of which must be commenced by an application in the approved form and in respect of which the Rules generally apply.

COMMISSIONER



DATE

31 March 2006
