Dust Diseases Tribunal of New South Wales

Advice to Practitioners 1 of 2003

Guidelines for the use of technology in litigation

Introduction

1.   This Advice to Practitioners provides a guideline to facilitate and support the use of information technology in the conduct of any litigation before the Tribunal.

Practitioners requiring assistance in the appropriate use of such technology are encouraged to contact the Office Manager for the Dust Diseases Tribunal of New South Wales on (02) 9377 5430. In most cases the Office Manager will refer you to the appropriate Information Technology Officer.

From time to time, technical terms are used in this Advice to Practitioners. They are defined in **Annexure 5** and when used are in **bold italics.**

2.   Parties are encouraged at the earliest stage to consider whether and how the use of information technology might lead to more efficient conduct of the litigation. In such a case the costs involved, including the expenses of retaining necessary consultants, will be treated as being 'reasonable' (s208F(a) Legal Profession Act 1987).

Where any party is of the opinion that the proceeding in its interlocutory stages or at trial ought to be conducted in accordance with this Advice to Practitioners application should be made before discovery to the judge managing the proceeding for directions as to how best this might be achieved.

3.   The attached checklist of technology issues (**Annexure 1**) is a useful guide to matters and should be referred to in conjunction with this Advice to Practitioners when agreeing on technical issues including formats and protocols that may need to be considered at various points during the course of proceedings.

4.   The Tribunal may issue further Advices to Practitioners in the future about such matters as e-filing, the exchange of information, provision of document **_images_** and the use of technology at trial. Parties are encouraged to refer to the Tribunal's Website at www.lawlink.nsw.gov.au/ddt/ddt.nsf/pages/ddtindex for up to date information and consider these issues from the commencement of proceedings.

Electronic exchange of Tribunal documents

5. (a) Unless the Tribunal otherwise orders, upon request by any party, all parties to a proceedings will exchange Tribunal documents (being those required to be filed and served) in an electronic format, agreed by the parties, in addition to the required hard copy.

   (b) The Tribunal may direct parties, in appropriate cases, to deliver to the trial Judge's Associate electronic versions of Tribunal documents prior to the hearing, to supplement the hard copy of documents filed with the Registry.

6. Parties should agree on such matters as:

   (a) the format in which electronic versions of Tribunal documents will be provided;

   (b) the methods by which electronic versions of Tribunal documents are to be exchanged;

   (c) the terms and conditions on which electronic versions of Tribunal documents are to be exchanged. If the parties fail to agree the default minimum standard will apply (see **Annexure 1**).

7. Where a party provides a document in electronic format, that document shall contain the same text as the paper copy.

8. Where a document contains an annexure, a party may provide the hard copy version of the annexure where an electronic version is not reasonably available.

9. While the sender should make every effort to provide **_virus_** free data it is the obligation of the recipient to test for viruses.

Electronic exchange of discovery list, data and images

10. (a) **_Discovery lists_** shall be provided in electronic format when requested, with due reference to Part 23 of the Supreme Court Rules.

    (b) prior to numbering any documents for discovery all parties should consult to agree the format of the document ID, which will be applied in order to comply with this Advice to Practitioners.

    (c) If the parties believe that the total of discoverable documents will

exceed 500 documents, they should consider the exchange of document *__data__* in an agreed electronic format using agreed *__fields__*, again with due reference to Part 23 of the Supreme Court Rules, and should consider the use of document *__images__* which can be referenced with the *__data__*. (The Tribunal's basis requirements for the hearing should be considered in the agreed index protocol). It is recommended the parties agree on a protocol for exchanging details of the documents before they make discovery. **Annexures 1, 2, 3 & 4** to this document outline technology issues that parties will need to consider when agreeing to an electronic protocol. If parties are unable to agree on protocols the default electronic standards will apply (see **Annexure 1**).

11. To assist parties to any civil proceeding, this Advice to Practitioners provides guidance (**Annexure 2**) on the *__fields__* that the parties should consider using to exchange information electronically about their discoverable documents or for case management purposes. When agreeing on a protocol, parties can vary from the suggested *__fields__* , where this is warranted by the circumstances of the case. Where the parties have agreed that discovery should be given by exchanging details of the documents in an agreed electronic format, they should:

  (a) endeavour to reach agreement on the *__protocol__* to be used prior to commencing data entry; or

  (b) subject to any order to the contrary apply the default electronic standard if no agreement is reached.

  In agreeing the *__protocol__* for information regarding discoverable documents the parties should give consideration to the use which might be made of this information in the preparation of the index to the hard copy Court book, in the preparation of an electronic Court book, in the preparation of electronic exhibits lists and, generally, at trial.

12. The Tribunal may make orders that parties:

  (a) meet to discuss how best to use technology to:

    (i) exchange information about their discoverable documents or imaged copies of the documents; and

    (ii) manage information in the proceedings generally.

13. The Tribunal will expect the parties to make all reasonable efforts to agree on a *__protocol__*.

14. At any directions hearing at which the use of technology has been raised the Tribunal expects the parties:

(a) to have ascertained the number and categories of documents likely to be discoverable by that party, taking into account any limits on discovery that may be agreed between the parties or the subject of a direction by the Tribunal;

(b) to have attempted to agree with the other parties on how to use technology to exchange ***discovery lists, data*** and/or ***images***;

(c) to be able to make informed submissions about how technology should be used to exchange ***discovery lists***, ***data*** and/or ***images.***

15. Existing rules of Tribunal presuppose that a hard copy ***discovery list*** will be verified by affidavit. If a party believes that it is appropriate to dispense with the verification of a hard copy ***discovery list*** or to adopt some other means of verification, it should apply to the Tribunal for an appropriate direction.

16. It should be noted that while advisory in nature the Tribunal may mandate the use of these guidelines in the case of an electronic hearing being decided upon and further, may mandate the use of the default technology standards in cases where the parties fail to agree on exchange and presentation mechanisms within a reasonable timeframe.

17. **Technology for the hearing**
Parties to any civil proceedings are encouraged where appropriate to consider the use of technology including an electronic Court book, at trial.

18. An electronic Court book might contain the following documents in electronic form, as well as images of all documents reasonably expected to be tendered or used at trial-
- Pleadings and Particulars
- Witness Statements
- Chronologies
- Outlines or summaries
- Transcript as the trial proceeds

19. At or prior to the proceeding being set down for trial the parties must make submissions to the Tribunal regarding how best to use technology at the trial. They should address all aspects of the technology which might be used by the parties and the Tribunal at trial, and in particular-

(a) the equipment and services (including appropriate hardware, software and additional infrastructure) that they and the Tribunal might require at trial (**Annexure 4** outlines the existing hardware and software capabilities of the Tribunal);

(b)   the arrangements that may need to be made between the parties, the Tribunal and any third party service providers to ensure that appropriate equipment and services are available at the hearing; and

(c)   agree on a format for the preparation of the electronic Court book which is compatible with the system provided by the Tribunal.

Dated: 3 January 2003

J.L. O'Meally
President

ANNEXURE 1

DUST DISEASES TRIBUNAL
TECHNOLOGY CHECK LIST

Parties are encouraged to use this checklist to identify technology issues that may arise during the proceedings. The default or minimum Tribunal option is only available if parties cannot agree.

Pre-trial (** Default or minimum Tribunal option)

Document Exchange of Tribunal Documents and Witness Statements	Electronic Document Format	Document Exchange Via
❑ Hard copy only ❑ Electronic copy only ❑ Hard copy and electronic copy (**)	❑ **ASCII** text file (**) ❑ Word Perfect Version # ❑ RTF ❑ Other	❑ DX ❑ Courier ❑ Australia Post ❑ Floppy disk (**) ❑ Electronic mail ❑ CD Rom ❑ Internet

Discovery (** Default or minimum Tribunal option)

Exchange of Documents Lists	Electronic Document List Format	Document Exchange Via
❑ Hard copy only ❑ Electronic copy only ❑ Hard copy and electronic copy (**) For Electronic Courtroom: ❑ Delimited ASCII text file	❑ Delimited **ASCII** text file (**) ❑ Word processing format ❑ Excel spreadsheet ❑ Other	❑ DX ❑ Courier ❑ Australia Post ❑ Floppy disk (**) ❑ Electronic mail ❑ CD Rom ❑ Internet

Example Database Formats (if applicable)
❑ Access ❑ Lotus Notes ❑ Filemaker Pro ❑ **MS-SOL**/Sybase ❑ Excel spreadsheet (**) ❑ Oracle ❑ Paradox ❑ Other

Document Inspection Format	Electronic Image Formats	Document Exchange Via
❑ Hard copy only ❑ Electronic/image copy of hard copy ❑ Hard copy and electronic/image copy (**) ❑ Non-paper record eg video/audio tape, database, microfiche, etc ❑ Other medium	❑ **TIFF** - Single (**) ❑ JPG ❑ Other	❑ DX ❑ Courier ❑ Australia Post ❑ Floppy disk (**) ❑ CD Rom

Trial (** Default or minimum Tribunal option)

Exchange of Agreed Bundle/Court Book Indexes	Electronic Document Index Format	Document Exchange Via
❑ Hard copy only ❑ Electronic/image copy only ❑ Hard copy and electronic/image copy (**) ❑ Other medium	❑ Delimited **ASCII** text file (**) ❑ Word processing format ❑ Excel spreadsheet ❑ Other	❑ DX ❑ Courier ❑ Australia Post ❑ Floppy disk (**) ❑ Electronic Mail ❑ CD Rom ❑ Internet/intranet

Court Book Format	Electronic Image Formats	Document Exchange Via
❑ Hard copy only ❑ Electronic/image copy of hard only ❑ Hard copy and electronic/image copy (**) ❑ Non-paper record eg video/audio tape, database, microfiche, etc ❑ Other medium	❑ **TIFF** - Single (**) ❑ JPG ❑ Other	❑ DX ❑ Courier ❑ Australia Post ❑ Floppy disk (**) ❑ CD Rom

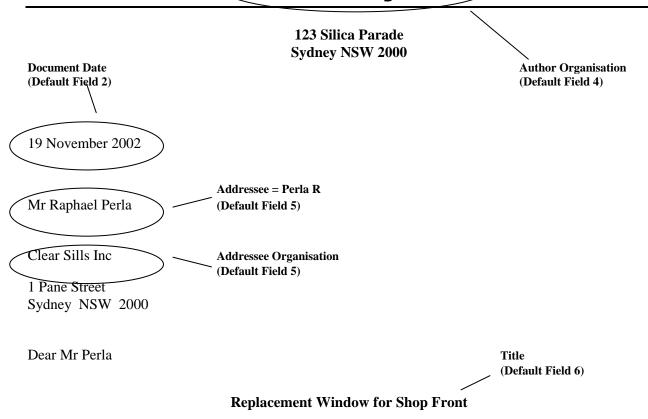| Special Considerations |
| --- |
| ❑ Redacting/Masking |
| ❑ Image Resolution |
| ❑ Unique image name |
| (Referenced by **Doc ID**) |

Default Fields: (if information is available)

1. **Doc ID**
2. **Date** (DD-MM-YYYY) ie 05-05-2002
3. Document type
4. **Author/author organisation**
5. **Addressee/Addressee organisation**
6. **Title; or**
7. **Description Field** incorporating 3, 4, 5 and 6 above (example taken from **Annexure 2** attached)
   Letter from Parker T, ACME Pty Ltd to Smith J, Wonder Window Inc entitled Replacement Window for Shop Front.

Please refer to **annexures 2** and **3** for more detail in regard to these fields of information. It is information about the documents.

Dust D. Pty Ltd

123 Silica Parade
Sydney NSW 2000

Document Date
(Default Field 2)

Author Organisation
(Default Field 4)

19 November 2002

Addressee = Perla R
(Default Field 5)

Mr Raphael Perla

Addressee Organisation
(Default Field 5)

Clear Sills Inc

1 Pane Street
Sydney NSW 2000

Dear Mr Perla

Title
(Default Field 6)

Replacement Window for Shop Front

I am writing to you to thank you for your prompt action in replacing the broken glass in our display rooms over the weekend. It was distressing to find that we'd been broken into and all our display stock had been stolen when we arrived at work on Saturday morning. It was a relief when your contractor arrived and fixed the window in such a cheerful, efficient manner.

Thank you for your assistance.

Kind regards

Nicholas Maxwell

Author = Maxwell N
(Default Field 4)

Example Description - Letter from Maxwell N of Dust D. Pty Ltd to Perla R of Clear Sills Inc entitled Replacement Window for Shop Front.
(Default Field 7)

Document ID
(Default Field 7)

ABC.001.001.001

ANNEXURE 3

DUST DISEASES TRIBUNAL OF NEW SOUTH WALES
GUIDELINES - POSSIBLE FIELDS FOR DATABASE

Please note that reference to default fields refer to **Annexures 1** and **2**

Field	Data type and length of field	Notes
Document ID **(Default Field 1)**	Text and numbers (if appropriate) Length - depending on field structure	Each document should be uniquely identified. The field may be broken into different components such as First Page and Last Page providing the parties agree. The field or fields might comprise a four part number in form AAA.NNN.NNN.NNN where "AAA" represents an alphabetic shorthand for the party name. The other three sets of numbers could be used to suit the convenience of the parties. It may be useful if the first set is used to refer to an archive box number, the second to the number of the folder within the box, and the third to the page number. **Rules for the numbering hierarchy can be agreed prior to discovery and the above is to be used as a guide not the definitive form.** The parties should consider whether each page should be individually numbered or agree on some other satisfactory arrangement. If agreement is not reached then the parties should seek the Court's direction. Attachments to documents an be separately listed and numbered. Attachments can be numbered sequentially following the host document. For example, a host document may be numbered XXX.001.001.0001 and its attachments would be numbered as XXX.001.001.0002, XXX.001.001.0003 and XXX.001.001.0004. If imaging is to be used the parties can agree to any additional information about the document identification.
No of pages	Numeric, 6	If the parties agree not to number each page (**), consideration should be given to an additional field recording the number of pages in each document.
Host document number	Text and number, length depending on the document ID structure	Contains First Page and, if agreed, Last Page of the host document to which an attachment is attached. There will never be multiple entries in this field, as each attachment should only ever have one host document.

Date **Default Field 2**	Date, 10	Date can be inserted as: DD-MM-YYYY for example 05-08-1996 DD = Day MM = Month YYYY = Year Undated = If there is no way of ascertaining the date of the document Documents with no discernible date will be coded as "Undated". Documents with only the month and year (ie August 1997) can be coded 01-08-1997 and an entry made in the next field - "Estimate Date". Documents with the day and month but no year are considered undated. For example a document dated 04/04 will be coded as "undated" as the year cannot be identified.
Estimate Date	Text, 3	Blank = If the exact full date is on the document (for example 04/03/1963) Yes = Where we cannot be certain of the actual date. For example if there is a partial date (eg August 1979), the date is stamped on, the date has been amended by hand or the only visible date is on the fax track If an agreement has an original date as well as a subsequent later date as a result of alterations being made to the document, then the later date is taken as the document date and guess date is left blank. If a newspaper clipping has the date/reference handwritten on to the document, then the document is dated according to the handwritten notation and is an "estimate date yes". Other options that can be considered for this field are: AFT = After BEF = Before MTH = Month ABT = About
Document type **Default Field 3**	Text, 254	This field can be completed using commonly received document types eg memo, deed. **Parties should endeavour to create a list of agreed document types prior to discovery.** If the document has been faxed, this field can include "facsimile". If a group of documents is being discovered as a bundle, this field may be completed as "Bundle of *document type*".

Privilege	Text, 6	This identifies whether a claim of privilege is made over the document. The permissible entries in this field are "YES", "NO" and "PART". If this field is completed with "YES" or "PART", the "basis of privilege field" must also be completed.
Basis of privilege	Text, 50 (or combination of text and numbers)	Identifies basis of privilege claim. Parties can agree how they will identify privilege claims. One possibility is to set out here the type of privilege claimed or the section or sections of any statute on which a party relies to make out its claim that the document is privileged.
Status	Text, 10	"Copy" or "Original".
Author **Default Field 4**	Text, 254 or as appropriate	Person or persons who wrote the document. To be completed using information on the face of the document. **Last name First initial only** for example "Smith B". If a document has multiple authors from the same author organisation enter as "Brown J/Jones J . . ." etc, or if more than one author from different author organisations enter as "Brown J, Jones J . . ." etc. Other ways of addressing multiple entries can be agreed between the parties.
Author Organisation **Default Field 4**	Text, 254 or as appropriate	Organisation from which the document emanated. To be completed from information on the face of the document. Multiple entries to be separated by commas. **Parties should endeavour to agree on standard spellings or abbreviations for organisations prior to discovery.** Other ways of addressing multiple entries can be agreed between the parties.
Addressee **Default Field 5**	Text, 254 or as appropriate	Person or persons to whom the document is addressed can include persons to whom copies are circulated. To be completed from information on the face of the document. **Last name First initial only**, for example "Smith B". If a document has multiple addressees from the same addressee organisation enter as "Brown J/Jones J . . ." etc, or if more than one author from different addressee organisations enter as "Brown J, Jones J . . ." etc. Other ways of addressing multiple entries can be agreed between the parties.

Addressee Organisation **Default Field 5**	Text, 254 or as appropriate	Organisation receiving the document. To be completed from information on the face of the document. Multiple entries to be separated by commas. **Parties should endeavour to agree on standard spellings or abbreviations for organisations prior to discovery.** Other ways of addressing multiple entries can be agreed between the parties.
Parties	Text, 254 or as appropriate	Identifies parties to an agreement or other legal document (not correspondence). Multiple entries to be separated by commas.
Title **Default Field 6**	Text, 254 or as appropriate	Title of a document such as "Report on Technology", etc.
Source	Text, 20 or as appropriate	Parties may find this field useful to identify documents that have been obtained from someone other than the party giving discovery eg documents obtained on subpoena or through some other compulsory process of obtaining access to documents. This field would identify the party from whom such documents were obtained.
Non-paper record	Text, 3	This field can be used to identify information recorded using a medium other than paper, where the relevant information has not been printed out and discovered in hard copy form eg video and audio tapes, floppy disks and magnetic computer tapes (these could contain emails, non-standard software applications, electronic documents, electronically stored documents or image files, etc). Permissible entries are "YES" and "NO".

ANNEXURE 4

Existing Hardware

The courtroom computers for practitioners use are Pentium III 450 MHZ IPEX machines with 40 times CD ROM drive. Minimum RAM 64 Mb 3 ½" floppy drive and are capable of supporting attachment of Iomega zip drives. Zip drive software is already loaded.

Software Available on user machines:

Brief Analyser 2000
Wandalan's eCourt client module
Iomega Zip drive

ANNEXURE 5

DUST DISEASES TRIBUNAL OF NEW SOUTH WALES
GLOSSARY

ASCII (American Standard Code for Information Interchange)

ASCII is the most common format for text files in computers and on the Internet. In an ASCII file, each alphabetic, numeric, or special character is represented with a 7-bit binary number

Brief Analyser 2000

is used as an in court evidence management and analysis tool. It automatically links documents and exhibits in the case file to references in the daily transcript. It also enables users to access and send documents to the associate when used in conjunction with *Wandalan's eCourt*.

Data

In computing, data is information that has been translated into a form that is more convenient to move or process (in the format of a database for example).

Database

A database is a collection of data that is organised so that its contents can easily be accessed, managed and updated.

Delimiter

A delimiter is a character that identifies the beginning or the end of a character string (a contiguous sequence of characters).

Discovery List

Discovery list describing discoverable documents in accordance with Supreme Court Rule Section 29.04, being Schedule 1 Part 1, Part 2 and Schedule 2 (where applicable). A list can be provided in hard copy or electronic format (or both if requested by other parties to the proceedings).

Diskette (floppy disk)

A diskette is a random access, removable data storage medium that can be used with personal computers.

Document ID

The Document ID is the method that each document is uniquely identified (refer to **Annexure 3** for example).

Field

A Field represents a column of data within a database. Each record (row) can be made up of a number of pieces of information therefore consist of a number of fields. These fields may be displayed as a box to enter or display data (in a form or report).

GIF (Graphics Interchange Format)

A GIF is one of the two most common file formats for graphic images on the World Wide Web. The other is the JPEG.

Image

An image is a picture that has been created or copied and stored in electronic form, an electronic photocopy.

Iomega Zip Drive

Iomega Zip Drives are portable magnetic storage devices available (externally or internally) in 100 and 250 Megabyte capacities. External devices can be connected to Personal Computers (PCs) via the parallel port or the USB port. Iomega Zip Drives connected via the USB Port do not require the PC to be rebooted for the PC to 'recognise' the device.

Medium

A medium is a third-party or element through which a message is communicated.

PDF (Portable Document Format)

PDF is a file format that has captured all the elements of a printed document. PDF is also an abbreviation for the Netware Printer Definition File but is not used in this document in this way.

Protocol

In information technology, a protocol is the special set of rules. Protocols are often described in an industry or international standard.

RTF

RTF is a file format that allows exchange of text files between different word processors in different operating systems.

SQL (Structured Query Language)

SQL is a standard interactive and programming language for getting information from and updating a database.

TIF or **TIFF** (Tag Imaged File Format)

TIFF is a common format for exchanging raster (bitmapped) images between application programs, including those used for scanning images.

Virus

A virus is a piece of programming code inserted into other programming to cause some unexpected and, for the victim, usually undesirable event. Viruses can be transmitted by downloading programs from an infected site (including internet sites) or they may be present on a diskette received from an infected system.

Wandalan's eCourt Client software

Is an electronic in court document management system which allows users to send electronic document images to an in court operator for distribution to any or all participants in that hearing. For more information contact http://www.wandalan.com.au.