

DUST DISEASES TRIBUNAL ACT 1989 No. 63

NEW SOUTH WALES



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DUST DISEASES TRIBUNAL ACT 1989 No. 63

NEW SOUTH WALES



Act No. 63, 1989

An Act to provide for the constitution of a Dust Diseases Tribunal, to define the jurisdiction and functions of the Tribunal, and to provide for related matters. [Assented to 23 May 1989]

See also Workers' Compensation (Dust Diseases) Amendment Act 1989.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY**Short title**

1. This Act may be cited as the Dust Diseases Tribunal Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act—

“ancillary or related matter”, in relation to any proceedings, includes any claim relating to the subject-matter of the proceedings that a defendant in the proceedings has against another person, whether that other person is a party to the proceedings or not;

“Compensation Court” means the Compensation Court of New South Wales constituted under the Compensation Court Act 1984;

“decision” includes judgment, order and ruling;

“dust-related condition” means—

- (a) a disease specified in Schedule 1; or
- (b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust;

“member” means a member of the Tribunal;

“registrar” means the registrar of the Tribunal;

“rules” means the rules of the Tribunal in force under this Act;

“Tribunal” means the Dust Diseases Tribunal of New South Wales established by this Act.

- (2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—CONSTITUTION OF THE TRIBUNAL**Tribunal to be established as a court of record**

4. (1) There is established by this Act a tribunal to be known as the Dust Diseases Tribunal of New South Wales.

- (2) The Tribunal is a court of record.

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Tribunal to have a seal

5. (1) The Tribunal is required to have a seal and to use the seal to seal or stamp any document that is required by or under this or any other Act to be sealed or stamped.

(2) All courts and persons acting judicially are required to take judicial notice of the Tribunal's seal.

Single member to constitute the Tribunal

6. The jurisdiction of the Tribunal is exercisable by a single member and that member, when exercising that jurisdiction, constitutes the Tribunal.

Members of the Tribunal: appointment etc.

7. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a member of the Tribunal.

(2) A person is qualified to be appointed as a member if the person is a Judge of the Compensation Court.

(3) The Oaths Act 1900 applies in respect of a member in the same way as it applies in respect of a Judge of the Supreme Court.

(4) Schedule 2 has effect with respect to a member.

Immunity of member

8. While exercising the functions of a member, a member has the same protection and immunity as a Judge of the Supreme Court has in the exercise of the functions of such a Judge.

Staff of the Tribunal to be appointed

9. (1) A registrar and such other staff of the Tribunal as may be necessary for the proper administration of this Act and the rules may be appointed and employed in accordance with Part 2 of the Public Sector Management Act 1988.

(2) A person may hold the office of registrar in conjunction with any other office if the functions of that other office are not inconsistent with those of the office of registrar.

(3) The registrar and other staff of the Tribunal have such functions as are prescribed by this Act and the rules.

(4) The Tribunal may, with the approval of the Minister and of the Minister administering a government department or administrative office, arrange for the use of the services of any staff or facilities of the department or office.

**PART 3—JURISDICTION OF,
AND PROCEEDINGS BEFORE, THE TRIBUNAL**

Jurisdiction and functions of the Tribunal

10. (1) The Tribunal has, except as provided by sections 29 and 32, exclusive jurisdiction to hear and determine proceedings referred to in sections 11 and 12.

(2) The Tribunal has such other jurisdiction as may be conferred on it by or under any other Act.

(3) The Tribunal has, wherever sitting, jurisdiction throughout New South Wales.

(4) In any proceedings brought under section 11 or transferred under section 12, the Tribunal has the same power to make decisions as the Supreme Court would, but for this section, have had in relation to similar proceedings brought in the Supreme Court.

(5) Subject to sections 13 (6) and 14, a decision of the Tribunal has the same effect as, and may be enforced in the same way as, a decision of the Supreme Court.

(6) In relation to proceedings within the jurisdiction of the Tribunal, the Tribunal has the functions of the Supreme Court under section 371 (2) of the Companies (New South Wales) Code with respect to the stay of proceedings.

Claims for damages for dust diseases etc. to be brought under this Act

11. (1) If—

- (a)** a person is suffering, or has suffered, from a dust-related condition or a person who has died was, immediately before death, suffering from a dust-related condition; and
- (b)** it is alleged that the dust-related condition was attributable or partly attributable to a breach of a duty owed to the person by another person; and
- (c)** the person who is or was suffering from the dust-related condition or a person claiming through that person would, but for this Act, have been entitled to bring an action for the recovery of damages in respect of that dust-related condition or death,

proceedings for damages in respect of that dust-related condition or death may be brought before the Tribunal and may not be brought or entertained before any other court or tribunal.

(2) In subsection (1), a reference to a duty includes a reference to a duty imposed by statute as well as a duty imposed under the common law.

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(3) If the cause of action giving rise to proceedings to be brought under subsection (1) also gives rise to a claim in respect of some other matter, the claim may be included in those proceedings even though it does not relate to a dust-related condition from which a person is suffering or has suffered.

(4) Any matter that is ancillary or related to a matter that is the subject of proceedings to be brought under subsection (1) may also be included in those proceedings.

Transfer of proceedings from the Supreme Court or District Court to the Tribunal

12. (1) If—

- (a) on the commencement of this section, proceedings of the kind referred to in section 11 (1) are pending in the Supreme Court and the hearing of those proceedings has not begun; or
- (b) after that commencement, proceedings of that kind are brought or are pending in the Supreme Court,

the registrar of the division of that Court in which the proceedings are pending or are brought must transfer the proceedings to the Tribunal, together with any ancillary or related matters.

(2) If—

- (a) on the commencement of this section, proceedings of the kind referred to in section 11 (1) are pending in the District Court and the hearing of those proceedings has not begun; or
- (b) after that commencement, proceedings of that kind are brought or are pending in the District Court,

the registrar of that Court for the place where the proceedings are pending or are brought must transfer the proceedings to the Tribunal, together with any ancillary or related matters.

Proceedings before the Tribunal

13. (1) The Tribunal must hold its proceedings in open court, except to the extent that the rules provide otherwise.

(2) The Tribunal is responsible for fixing the times and places for the holding of its proceedings.

(3) The Tribunal may adjourn its proceedings to any time or place.

(4) If proceedings before the Tribunal have been brought by two or more persons and those proceedings arise out of the same cause of action, the Tribunal may hear and determine those proceedings together if of the opinion that none of those persons' cases would be prejudiced.

(5) A decision of the Tribunal is not liable—

- (a) to be vitiated because of any informality or want of form; or

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(b) to be questioned or appealed against in any court, except as provided by section 32 of this Act or section 48 of the Supreme Court Act 1970.

(6) Whenever appropriate, the Tribunal may reconsider any matter that it has previously dealt with, or rescind or amend any decision that the Tribunal has previously made.

Judgments and orders for payment of money

14. (1) If a judgment or order of the Tribunal is for payment of an amount of money (including a sum awarded as costs) the judgment or order shall, on the filing of the prescribed documents in the registry of the Common Law Division of the Supreme Court, be taken to be a judgment of that Court for the payment of that amount of money in accordance with the judgment or order of the Tribunal.

(2) For the purposes of subsection (1), the prescribed documents are—

- (a) a copy of the judgment or order of the Tribunal certified by the registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was adjudged or ordered to be paid specifying the amount unpaid under the judgment or order and, where the judgment or order is to take effect on a default, as to the making of the default.

(3) No fee is payable for the filing of documents under subsection (1).

(4) Subsection (3) applies irrespective of the provisions of any other Act to the contrary.

Tribunal may order the payment of interest before damages become payable

15. (1) In any proceedings before the Tribunal, the Tribunal may order that there be included in any award of damages or of any other sum that it has adjudged or ordered to be paid interest at such rate as it thinks appropriate on the whole or any part of that award for the whole or any part of the period from the date when the cause of action arose until the date when the damages or sum became payable.

(2) Subsection (1) does not—

- (a) authorise the giving of interest on interest; or
- (b) apply in relation to a debt on which interest is payable as of right, whether by virtue of an agreement or otherwise.

Interest normally payable in respect of unpaid damages

16. (1) Unless the Tribunal in any particular case orders that interest should not be paid, and subject to subsection (3), interest is payable on so much of an award of damages or of any other sum which the Tribunal has adjudged or ordered to be paid as remains from time to time unpaid.

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(2) Interest payable under subsection (1) in respect of an award of damages or of any other sum—

- (a) must be calculated as from the date when the award was made or from such later date as the Tribunal in any particular case decides; and
- (b) must be calculated at the rate prescribed for the purposes of section 95 (1) of the Supreme Court Act 1970; and
- (c) forms part of the award, but not so as to require the payment of interest on interest.

(3) If—

- (a) the amount of an award of damages or of any other sum which the Tribunal has ordered to be paid (excluding the amount of costs to be ascertained by taxation or otherwise) is paid in full within 28 days after the award becomes payable; or
- (b) the amount of costs ascertained by taxation or otherwise is paid in full within 28 days after that amount is so ascertained,

interest is not, unless the Tribunal otherwise orders in any particular case, payable on the amount so paid.

Parties to proceedings before the Tribunal

17. (1) If a party to proceedings before the Tribunal has a right to proceed against two or more persons who may be jointly liable—

- (a) it is sufficient if at least one of those persons is served with process in the proceedings; and
- (b) a decision in the proceedings may be given and enforced against the person or persons found to be liable.

(2) Subsection (1) is subject to the rules.

(3) Section 97 of the Supreme Court Act 1970 applies to a decision given in proceedings before the Tribunal in the same way as it applies to a judgment given in proceedings before the Supreme Court.

(4) An executor, administrator, trustee or other legal personal representative may bring or defend proceedings before the Tribunal in the same manner as if he or she were bringing or defending proceedings in his or her own right.

(5) If, before the holding of particular proceedings before the Tribunal or at any stage during the holding of any proceedings, the Tribunal is of the opinion that a person ought to be joined as a party to the proceedings, the Tribunal may, by notice in writing served on the person or by oral direction given during the proceedings, join the person as a party to the proceedings.

Notice and conduct of proceedings**18. (1) The Tribunal must—**

- (a) fix a time and place for the hearing of proceedings before it; and
- (b) cause the registrar to serve on each party to the proceedings a notice—
 - (i) specifying the time and place so fixed and the matters to which the proceedings relate; and
 - (ii) directing the party to attend at that time and place.

(2) The Tribunal must give each party to proceedings before it a reasonable opportunity to call and give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(3) If a party to proceedings before the Tribunal on whom a notice has been served in accordance with subsection (1) fails to attend at the time and place specified in the notice, the proceedings may be heard in the absence of the party.

Right of appearance and representation before the Tribunal**19. (1) A party to proceedings before the Tribunal—**

- (a) may appear in the proceedings personally or by a barrister or solicitor; and
- (b) may not, except by leave of the Tribunal, be represented in the proceedings otherwise than by a barrister or solicitor.

(2) Only a barrister or solicitor is entitled to demand or receive a fee or reward for representing a party in proceedings before the Tribunal.

Subpoenas and examination of witnesses

20. (1) If the Tribunal so directs or a party to proceedings before the Tribunal so requests, the registrar must issue a subpoena requiring a specified person to do either or both of the following:

- (a) to attend and give evidence before the Tribunal at a time and place specified in the subpoena;
- (b) to produce to the Tribunal, or to attend before the Tribunal and produce, any document or thing in the person's custody or under the person's control that the person is required by the subpoena to produce.

(2) If—

- (a) in accordance with this section, a person is required by a subpoena to produce a document; and
- (b) the document is not in writing, or is not written in the English language, or is not decipherable on sight,

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the subpoena shall be taken to require the person to produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the document.

(3) The Tribunal may administer an oath to any person appearing as a witness before the Tribunal, whether or not a subpoena has been issued to the witness under subsection (1), and allow the witness to be examined and cross-examined on oath.

(4) A witness attending or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities, as a witness would have or be subject to in proceedings before the Supreme Court.

(5) A witness attending before the Tribunal in accordance with a subpoena issued under subsection (1) is entitled to be paid such fees and allowances as are prescribed by, or calculated in accordance with, the rules.

(6) If a subpoena is issued under subsection (1) at the request of a party, the person specified in the subpoena is not required to comply with the subpoena unless, not later than a reasonable time before the day on which the subpoena is to be complied with, that person is tendered an amount, prescribed by, or calculated in accordance with, the rules, to meet the expense of complying with the requirements of the subpoena.

Person issued with a subpoena may be apprehended

21. (1) If a person served with a subpoena issued under section 20 (1) to attend before, or to produce a document to, the Tribunal fails to comply with the subpoena, the Tribunal may, on proof of the service of the subpoena, issue to such person as the Tribunal appoints a warrant for the apprehension of that person.

(2) A warrant issued under this section authorises—

- (a) the apprehension of the person to whom the warrant relates; and
- (b) the bringing of that person before the Tribunal; and
- (c) the detention of that person in custody until he or she is released by order of the Tribunal or the Supreme Court.

(3) The apprehension of a person under this section does not relieve the person from any liability incurred as a result of non-compliance with a subpoena to attend before, or to produce a document or thing to, the Tribunal.

Inspection and retention of records

22. (1) The Tribunal—

- (a) may inspect any document or statement produced before it and retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced; and

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(b) may make copies of the document or statement or any part of the document or statement.

(2) If a document or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the document or statement is, on request, entitled to be supplied, as soon as practicable, with a copy of the document or statement certified by the registrar to be a true copy.

(3) A document or statement so certified is admissible as evidence in all courts as if it were the original document or statement.

(4) If, in accordance with subsection (2), a person is entitled to be supplied with a copy of a document or statement, the person, or a person authorised by the person, may, at such times and places as the registrar directs, inspect and make copies of, or take extracts from, the document or statement.

Informal proof and admissions

23. (1) The Tribunal, at any stage of any proceedings before it—

(a) may dispense—

(i) with the rules of evidence for proving any matter which is not genuinely in dispute; and

(ii) with such rules as might cause expense and delay arising from any commission to take evidence or arising from any other circumstance; and

(b) may require any party to the proceedings (not being a minor or person of unsound mind) to make admissions with respect to any document or to any question of fact; and

(c) in the case of a refusal or neglect to make those admissions, may, unless the Tribunal is of the opinion that the refusal or neglect is reasonable, order that party to pay the costs of proof resulting from the refusal or neglect.

(2) Without limiting subsection (1) (a), the Tribunal may dispense with proof of handwriting, documents or the identity of parties, or proof of authority.

(3) An admission made as required by the Tribunal under subsection (1) (b)—

(a) is for the purpose of the proceedings in which it is made and for no other purpose; and

(b) is subject to all just exceptions; and

(c) may, with the leave of the Tribunal, be amended or withdrawn.

(4) The Tribunal may give leave for the purposes of subsection (3) (c) on terms.

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Examination de bene esse

24. (1) The Tribunal may, on the application of a party to proceedings before it, authorise—

- (a) any judge, counsel, attorney, commissioner for taking affidavits or justice of the peace, whether of New South Wales or elsewhere; or
- (b) any British Consular Officer or Australian Consular Officer in any place out of New South Wales,

to take at some convenient place the examination of a witness de bene esse, if the witness—

- (c) is absent from New South Wales; or
- (d) is expected to die or to be unable from sickness or infirmity to attend at the hearing of the proceedings.

(2) In subsection (1), the expressions "Australian Consular Officer" and "British Consular Officer" have the same meanings as they have in section 26 of the Oaths Act 1900.

Evidence in proceedings before the Tribunal

25. (1) Any evidence that would be admissible in proceedings in the Supreme Court is admissible in proceedings before the Tribunal.

(2) Except as otherwise provided by this Part or the rules, evidence is not admissible in proceedings before the Tribunal if it would not be admissible in those proceedings by virtue of subsection (1).

Contempt of the Tribunal

26. In respect of proceedings before the Tribunal, the Tribunal has the same powers for punishing contempt of the Tribunal as are conferred on a Judge of the Supreme Court for punishing contempt of a division of the Supreme Court.

Dismissal of frivolous etc. proceedings

27. (1) If, at any stage of proceedings before the Tribunal, the Tribunal is satisfied—

- (a) that the proceedings are frivolous, vexatious, misconceived or lacking in substance; or
- (b) that for any other reason the proceedings should not be entertained,

it may dismiss the proceedings.

(2) If the Tribunal dismisses the proceedings as provided by subsection (1), it may order the person who brought the proceedings to pay the costs of the proceedings.

Tribunal to provide reasons for its decisions

28. The Tribunal must include in any decision that it gives under this Act a statement of reasons for the decision.

Tribunal may award costs

29. (1) The Tribunal may, in any proceedings before it, make such order as to the payment of costs as it thinks just and may assess the amount of those costs.

(2) Costs included in an order or assessment under subsection (1) must not, where provision is made for similar costs in the scales applicable to proceedings in the Common Law Division of the Supreme Court, exceed the costs provided for in the highest of those scales, except with the approval of the Tribunal or the officer responsible for taxing those costs.

(3) The registrar of the Common Law Division of the Supreme Court is the officer responsible for taxing costs included in an order or assessment made under subsection (1).

Service of documents

30. Service of a document for the purposes of or in relation to proceedings before the Tribunal may be effected by delivering a copy of the document to the person on whom the document is to be served or in such manner as may be prescribed by the rules.

Tribunal may give procedural directions in certain cases

31. If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act or by the rules—

- (a) the Tribunal may direct what manner or form of procedure is to be followed; and
- (b) any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regarded as having been taken lawfully.

Right of appeal to the Court of Appeal

32. (1) If a party to any proceedings before the Tribunal is dissatisfied with a decision of the Tribunal, the party may appeal against the decision to the Court of Appeal.

(2) If the amount awarded under a decision of the Tribunal is less than \$5,000, an appeal under subsection (1) lies only with the leave of the Court of Appeal.

(3) The decision of the Court of Appeal on the hearing of an appeal under subsection (1) is binding on the Tribunal and on all parties to the proceedings from which the appeal was made.

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PART 4—SUPPLEMENTARY PROVISIONS**Rules**

33. (1) Until rules are made under subsection (3), the rules of court of the Supreme Court apply, with necessary modifications and to the extent that they are not inconsistent with this Act, to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction in the same way as they apply to proceedings before the Supreme Court and to matters in respect of which that Court has jurisdiction.

(2) While rules of court of the Supreme Court apply to proceedings before the Tribunal and to matters in respect of which the Tribunal has jurisdiction, those rules shall, subject to this Act, be taken to be rules of the Tribunal for the purposes of this Act.

(3) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed for the purposes of, or in connection with, the exercise by the Tribunal of its jurisdiction or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(4) Without limiting subsection (3), rules may be made under that subsection for or with respect to—

- (a) the procedure and practice to be followed in proceedings before the Tribunal (including the procedure and practice to be followed in the office of the registrar) and any matters incidental or relating to any such procedure or practice; and
- (b) the continuance of proceedings on the death or bankruptcy of a party or, in the case of a party that is a corporation, the continuance of proceedings on the winding up or dissolution of the corporation; and
- (c) the listing of matters for hearing by the Tribunal and the removal of matters from lists; and
- (d) the commencement of proceedings before the Tribunal; and
- (e) pre-hearing conferences and arbitration; and
- (f) the charging of fees for interpreting services; and
- (g) authorising the registrar or an agent of the Tribunal to—
 - (i) exercise any function of the Tribunal; or
 - (ii) exercise any function that, under the rules, is required to be exercised; and
- (h) regulating the payment or transfer of money into or out of the Tribunal; and
- (i) the duties of, and the records to be kept by, the registrar in relation to, or for the purposes of, any proceedings before the Tribunal; and
- (j) any matters relating to costs of proceedings before the Tribunal, including taxation of costs.

*Dust Diseases Tribunal 1989***Regulations: Tribunal fees**

34. The Governor may make regulations for or with respect to fees to be paid in respect of proceedings before the Tribunal.

Power to add diseases to Schedule 1

35. (1) The Governor may, by order published in the Gazette, amend Schedule 1 by inserting the name of any disease.

(2) An order under subsection (1) takes effect on and from a day specified in the order or, if no day is so specified, on and from the date on which the order is published in the Gazette.

Amendment of Supreme Court Act 1970 No. 52

36. The Supreme Court Act 1970 is amended by inserting in the definition of "specified tribunal" in section 48 (1) (a), after subparagraph (ii), the following subparagraph:

(iia) the Dust Diseases Tribunal of New South Wales;

SCHEDULE 1—PRESCRIBED DUST DISEASES

(Secs. 3, 35)

Aluminosis
Asbestosis
Asbestos induced carcinoma
Asbestos related pleural diseases
Bagassosis
Berylliosis
Byssinosis
Coal dust pneumoconiosis
Farmers' lung
Hard metal pneumoconiosis
Mesothelioma
Silicosis
Silico-tuberculosis
Talcosis

SCHEDULE 2—PROVISIONS APPLICABLE TO A MEMBER OF THE TRIBUNAL

(Sec. 7 (4))

Effect of appointing a Judge of the Compensation Court to be a member of the Tribunal

1. (1) Neither the appointment as a member of the Tribunal of a person who is a Judge of the Compensation Court, nor the service of the person as such a member, affects the person's tenure of office as a Judge of that Court or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

(2) A Judge of the Compensation Court who is appointed as a member of the Tribunal may continue to exercise the functions of a Judge of that Court.

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SCHEDULE 2—PROVISIONS APPLICABLE TO A MEMBER OF THE
TRIBUNAL—*continued*

(3) The service, as a member of the Tribunal, of a Judge of the Compensation Court shall, for all purposes, be taken to be service as a Judge of that Court.

Vacation of office

2. A person who holds office as a member of the Tribunal by virtue of being a Judge of the Compensation Court ceases to hold that office if the person—

- (a) ceases to be a Judge of that Court; or
 - (b) resigns that office by instrument in writing addressed to the Governor.
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*[Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 11 May 1989]*