



New South Wales

Courts Legislation Amendment Act 1995 No 21

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Summary of provisions affected

Compensation Court Act 1984

<i>Provision affected</i>	<i>Amending Schedule</i>
s 3	Sch 5 (1), (2)
s 9	Sch 2.1 (1)–(5)
s 11	Sch 2.1 (6)
s 11A	Sch 2.1 (7)
s 14	Sch 5 (3)–(6)

District Court Act 1973

<i>Provision affected</i>	<i>Amending Schedule</i>
s 15	Sch 2.2 (1)
s 15A	Sch 2.2 (2)
s 83A	Sch 1.1

Dust Diseases Tribunal Act 1989

<i>Provision affected</i>	<i>Amending Schedule</i>
s 3	Sch 4 (1), (6), (10)
s 7	Sch 4 (7)
ss 7A, 7B	Sch 4 (8)
s 11A	Sch 4 (2)
s 13	Sch 4 (9), (20)
s 18	Sch 4 (4)
s 25	Sch 4 (19)
s 28	Sch 4 (5)
ss 32A–32F	Sch 4 (11)
ss 32G–32R	Sch 4 (17)
s 33	Sch 4 (3), (12)–(14), (18), (21)
s 37	Sch 4 (15)
Sch 3	Sch 4 (16)

Local Courts Act 1982

<i>Provision affected</i>	<i>Amending Schedule</i>
s 4	Sch 3 (1)
s 16	Sch 3 (2)
ss 18–19A	Sch 3 (3)
s 28	Sch 3 (4)

Statutory and Other Offices Remuneration Act 1975

<i>Provision affected</i>	<i>Amending Schedule</i>
Sch 1	Sch 2.3 (1)
Sch 4	Sch 2.3 (2)

Supreme Court Act 1970

<i>Provision affected</i>	<i>Amending Schedule</i>
s 94	Sch 1.2

Local Courts Regulation 1994

<i>Provision affected</i>	<i>Amending Provision</i>
The whole Regulation	s 4

Dust Diseases Tribunal Rules

<i>Provision affected</i>	<i>Amending Provision</i>
r 4	s 5



New South Wales

Courts Legislation Amendment Act 1995 No 21

Act No 21, 1995

An Act to amend the *Supreme Court Act 1970* and the *District Court Act 1973* in relation to the award of interest; to amend the *District Court Act 1973* and the *Compensation Court Act 1984* in relation to the remuneration, style and title of the Chief Judges; to amend the *Compensation Court Act 1984* to provide for the appointment of an Acting Chief Judge and a deputy registrar; to make miscellaneous amendments to the *Local Courts Act 1982* and the *Dust Diseases Tribunal Act 1989*; to make consequential amendments to the *Statutory and Other Offices Remuneration Act 1975*; and for other purposes. [Assented to 19 June 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment Act 1995*.

2 Commencement

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

3 Amendments

The Acts specified in Schedules 1, 2, 3, 4 and 5 are amended as set out in those Schedules.

4 Consequential repeal of Local Courts Regulation 1994

- (1) The *Local Courts Regulation 1994* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Local Courts Regulation 1994*, had effect under that Regulation is taken to have effect under the *Local Courts Act 1982* as amended by this Act.

5 Consequential amendment of Dust Diseases Tribunal Rules

The *Dust Diseases Tribunal Rules* are amended by omitting rule 4.

6 Explanatory notes

Matter appearing under the heading “Explanatory note” in this Act does not form part of this Act.

Schedule 1 Amendments relating to interest awards

(Section 3)

1.1 District Court Act 1973 No 9

Section 83A Interest up to judgment

Omit section 83A (3). Insert instead:

- (3) In any action for damages, the Court may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.
- (4) For the purposes of subsection (3), *appropriate settlement* sum is a sum offered by a defendant on or after the commencement of subsection (3) (as inserted by the *Courts Legislation Amendment Act 1995*) in settlement of an action where the amount for which judgment is given (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. This subsection extends to such a settlement offer whether the action commenced before, on or after the commencement of this subsection.
- (5) Subsection (3) does not prevent an award of interest for the period before the settlement offer is made.

1.2 Supreme Court Act 1970 No 52

Section 94 Interest up to judgment

Omit section 94 (3). Insert instead:

- (3) In any proceedings for damages, the Court may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.
- (4) For the purposes of subsection (3), *appropriate settlement sum* is a sum offered by a defendant on or after the commencement of subsection (3) (as inserted by the *Courts Legislation Amendment Act 1995*) in settlement of proceedings where the sum for which judgment is given (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. This subsection extends to such a settlement offer whether the proceedings commenced before, on or after the commencement of this subsection.
- (5) Subsection (3) does not prevent an award of interest for the period before the settlement offer is made.

Explanatory note

Under section 94 of the *Supreme Court Act 1970* and section 83A of the *District Court Act 1973*, as currently in force, a plaintiff is not entitled to any interest if the defendant has made an offer of settlement (which is not accepted by the plaintiff) and the offer matches or nearly matches the amount ultimately awarded by the court.

The object of the amendments to these sections is to make it clear that in proceedings or an action for damages interest cannot (in the absence of special circumstances) be awarded for the period after the date on which a settlement offer is made unless the amount of the judgment (including interest accruing before the settlement offer) exceeds the offer by more than 10 per cent.

These amendments will apply to a settlement offer made on or after the commencement of the amendments, but will not affect judgments given before that commencement. The amendments will also not prevent an award of interest for the period before the settlement offer was made.

Schedule 2 Amendments relating to Chief Judges of District Court and Compensation court

(Section 3)

2.1 Compensation Court Act 1984 No 89

[1] Section 9 Tenure etc

Omit “and the same remuneration and other rights” from section 9 (4).

[2] Section 9

Insert after section 9 (4):

(4A) The Chief Judge is also entitled to a like style and title as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.

(4B) The Chief Judge is entitled to the same remuneration as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.

[3] Section 9

Insert “or (4B)” after “subsection (4)” in section 9 (5).

[4] Section 9

Omit section 9 (6). Insert instead:

(6) A Judge (other than the Chief Judge) is entitled to a like style and title as that to which a Judge of the District Court is entitled.

[5] Section 9

Omit section 9 (7).

[6] Section 11 Acting Judges

Insert “unless an appointment has been made under section 11A” after “senior Judge” in section 11 (1).

[7] Section 11A

Insert after section 11:

11A Absence of Chief Judge

- (1) The Governor may, by commission under the public seal of the State, appoint a Judge to be Acting Chief Judge during such period as the Chief Judge may be absent from his or her duties.
- (2) While holding office, the Acting Chief Judge:
 - (a) has the powers and authorities of the Chief Judge, and
 - (b) is to fulfil the duties of the Chief Judge, and
 - (c) is entitled to the same remuneration as that to which the Chief Judge is entitled.

2.2 District Court Act 1973 No 9

[1] Section 15 Remuneration

Insert “(other than the Chief Judge)” after “The Judges” in section 15 (1).

[2] Section 15A

Insert after section 15:

15A The Chief Judge

- (1) The Chief Judge is entitled to a like style and title as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.
- (2) The Chief Judge is entitled to the same remuneration as that to which a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal) is entitled.

**2.3 Statutory and Other Offices Remuneration Act 1975
(1976 No 4)**

[1] Schedule 1 Public Offices

Omit “Chief Judge of the District Court.”.

[2] Schedule 4 Excluded Offices

Insert after “Judge of the Industrial Court other than the Chief Judge and the Deputy Chief Judge.”:

Chief Judge of the District Court.

Explanatory note

The objects of these amendments are:

- to ensure that the Chief Judges of the District Court and the Compensation Court are remunerated at the same rate as a Judge of the Supreme Court (other than the Chief Justice or the President of the Court of Appeal), and
- to provide for the Chief Judges to have a like style and title to that of a Judge of the Supreme Court, (as applicable, “the Honourable Mr. Justice ...” or “the Honourable Justice ...”), and
- to provide that an Acting Chief Judge of the Compensation Court may be appointed in the absence of the Chief Judge, and
- to make consequential amendments to the *Statutory and Other Offices Remuneration Act 1975*.

Schedule 3 Amendments relating to Magistrates

(Section 3)

Local Courts Act 1982 No 164

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Designated Magistrate means any of the following:

- (a) the State Coroner,
- (b) the Chairman of the Licensing Court,
- (c) the Chief Industrial Magistrate,
- (d) the Senior Children's Magistrate.

[2] Section 16 Oaths to be taken by Magistrates

Omit section 16 (1) (a). Insert instead:

- (a) taken and subscribed under the *Oaths Act 1900* both the oath of allegiance and the judicial oath, or

[3] Sections 18, 19, 19A

Insert after section 17:

18 Seniority of Magistrates generally

- (1) The order of seniority of Magistrates is as follows:
 - Chief Magistrate
 - Deputy Chief Magistrate
 - Designated Magistrate
 - Magistrate
- (2) A Magistrate who has limited tenure is not entitled to seniority over any other Magistrate.

19 Seniority of Magistrates within the same class

- (1) A Magistrate is senior to another Magistrate if the appointment of the Magistrate took effect before the appointment of the other Magistrate.
- (2) If the appointment of two or more Magistrates took effect on the same day, the various Magistrates have seniority:
 - (a) according to their instruments of appointment, or
 - (b) if their instruments of appointment do not provide for seniority between them, according to the order in which they took and subscribed the oaths, or made and subscribed the affirmations, referred to in section 16 (1).
- (3) A Designated Magistrate is senior to another Designated Magistrate:
 - (a) if the salary of the Designated Magistrate is greater than that of the other Designated Magistrate, or
 - (b) where the salaries are equal, if the appointment of the Designated Magistrate (as a Designated Magistrate) took effect before the appointment of the other Designated Magistrate (as a Designated Magistrate).
- (4) A Deputy Chief Magistrate is senior to another Deputy Chief Magistrate if the appointment of the Deputy Chief Magistrate (as a Deputy Chief Magistrate) took effect before the appointment of the other Deputy Chief Magistrate (as a Deputy Chief Magistrate).
- (5) This section does not affect the order of seniority set out in section 18.

19A Court dress

No Magistrate may robe at any sitting of a Local Court.

[4] Section 28

Omit the section. Insert instead:

28 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Explanatory note

The proposed amendments:

- (a) incorporate in the *Local Courts Act 1982* the provisions of the Local Courts Regulation 1994:
 - to require newly appointed Magistrates, as a prerequisite for taking office, to take the oath of allegiance and the judicial oath (or to make affirmations to that effect) in the terms provided by the Oaths Act 1900, and
 - to provide for seniority among Magistrates, and
 - to prohibit Magistrates robing, and
- (b) omit superfluous provisions of the general regulation-making power relating to those matters and to the establishment of committees.

Schedule 4 Amendments relating to Dust Diseases Tribunal

(Section 3)

Dust Diseases Tribunal Act 1989 No 63

Amendments—provisional damages

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

damages includes further damages awarded under section 11A.

[2] Section 11A

Insert after section 11:

11A Award of provisional damages

- (1) This section applies to proceedings of the kind referred to in section 11 (1) that are brought after the commencement of this section and in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the person who is suffering from the dust-related condition in respect of which the proceedings are brought (“the injured person”) will, as a result or partly as a result of the breach of duty giving rise to the cause of action, develop another dust-related condition.
- (2) The Tribunal may, in accordance with the rules:
 - (a) award damages assessed on the assumption that the injured person will not develop another dust-related condition, and
 - (b) award further damages at a future date if the injured person does develop another dust-related condition.

[3] Section 33 Rules

Insert after section 33 (4) (b):

- (b1) the manner in which, time at which and persons by whom further damages to be awarded under section 11A (and any interest on those damages awarded under section 15) may be claimed, and

Explanatory note—items (1)–(3)

At present the Tribunal may assess damages only on a once-and-for-all basis even where there is a chance of a further dust-related condition developing eg asbestosis may progress to mesothelioma. The proposed amendments will enable the Tribunal to award compensation for an injury without removing the right to proceed later for compensation for a different injury arising from the same dust exposure, so avoiding the necessity to include in the award a component for the possibility of a different injury developing.

Amendment—notice and conduct of proceedings

[4] Section 18 Notice and conduct of proceedings

Omit the section.

Explanatory note—item (4)

The proposed amendment omits an unnecessary provision requiring the Tribunal to fix a time and place for the hearing of proceedings and for the registrar to serve notice on each party to the proceedings.

Amendment—reasons

[5] Section 28 Tribunal to provide reasons for its decisions

Omit the section.

Explanatory note—item(5)

At common law, judges have an obligation to give reasons for decisions (as explained in cases such as *Pettitt v Dunkley* [1971] 1 NSWLR 376 and *Soulemezis v Dudley (Holdings) Pty Ltd* [1987] 10 NSWLR 247). The proposed amendment removes an unnecessary provision so that the Tribunal will be bound by the common law requirements that are applicable to other courts.

Amendments—Senior Member

[6] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Senior Member means the Senior Member of the Tribunal.

[7] Section 7 Members of the Tribunal

Insert after section 7 (3):

- (3A) The Governor may, by the commission of a person's appointment as a member or by a subsequent commission under the public seal of the State, appoint a member to be Senior Member of the Tribunal.
- (3B) Subject to subsection (3C), the Senior Member is to hold office as Senior Member so long as he or she holds office as a member.
- (3C) With the approval of the Governor, the Senior Member may resign his or her office as Senior Member without resigning his or her office as a member.

[8] Sections 7A and 7B

Insert after section 7:

7A Vacancy in office of or absence of Senior Member

- (1) If there is a vacancy in the office of the Senior Member, or the Senior Member is absent from his or her duties, the senior of the other members willing to act as Senior Member is, if there is no Acting Senior Member appointed under section 7B, to act as Senior Member, and is, while so acting, to have all the functions of the Senior Member.

- (2) For the purposes only of subsection (1):
- (a) the members are to have seniority between themselves according to the dates of their commission as members, a member whose commission is dated earlier than that of another member being senior to that other member, and
 - (b) if the commissions of two or more members bear the same date, those members are to have seniority between themselves according to the seniority assigned to them by their commission or, failing any such assignment, according to the order of their being sworn.

7B Acting Senior Member

- (1) The Governor may, by commission under the public seal of the State, appoint a member to be Acting Senior Member during such period as the Senior Member may be absent from his or her duties.
- (2) While holding office, the Acting Senior Member is to have the same functions as the Senior Member.

[9] Section 13 Proceedings before the Tribunal

Omit section 13 (2). Insert instead:

- (2) The Senior Member is to fix the times and places for the holding of proceedings before the Tribunal and is to nominate the member before whom proceedings are to be held.

Explanatory note—items (6)–(9)

The proposed amendments provide for the appointment of a member of the Tribunal as Senior Member, for appointment of an Acting Senior Member and for casual vacancies in the office of Senior Member. The Senior Member is to be responsible for fixing the times and places for holding proceedings and is to chair the Rule Committee (see Schedule 4 (11)).

Amendments—Rule Committee

[10] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

barrister means a legal practitioner who holds a current practising certificate as a barrister.

Rule Committee means the Dust Diseases Tribunal Rule Committee established under section 32A.

solicitor means a legal practitioner who holds a current practising certificate as a solicitor.

[11] Part 3A

Insert after section 32:

Part 3A Rule Committee

32A Establishment of the Rule Committee

There is to be a Dust Diseases Tribunal Rule Committee.

32B Composition of the Rule Committee

- (1) The Rule Committee is to be composed of no more than 6 members.
- (2) Of the members of the Rule Committee:
 - (a) one is to be the Senior Member of the Tribunal, and
 - (b) no more than 3 are to be members of the Tribunal other than the Senior Member, and
 - (c) one is to be a barrister, and
 - (d) one is to be a solicitor.
- (3) A member of the Rule Committee referred to in subsection (2) (b), (c) or (d) is to be appointed by the Senior Member in writing.

- (4) Subject to this section, a member of the Rule Committee referred to in subsection (2) (b), (c) or (d) holds office for such period as may be specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment or, as the case may be, for further re-appointment.
- (5) A member of the Rule Committee ceases to hold office as such:
 - (a) when the member ceases to hold the qualification by virtue of which the member was appointed, or
 - (b) in the case of a member referred to in subsection (2) (b), (c) or (d), if the member resigns as such in writing addressed to the Senior Member.
- (6) In the event of the office of any member of the Rule Committee becoming vacant, a suitably qualified person must, in the case of a member referred to in subsection (2) (b), (c) or (d) and subject to this section, be appointed to fill the vacancy.

32C Deputies for barrister and solicitor members

- (1) The Senior Member may, from time to time, appoint to the Rule Committee:
 - (a) a barrister to be the deputy of the member appointed under section 32B (2) (c), and
 - (b) a solicitor to be the deputy of the member appointed under section 32B (2) (d),and the Senior Member may revoke any such appointment.
- (2) In the absence of a member appointed under section 32B (2) (c) or (d), the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has the functions of the member and is taken to be the member.

32D Chairperson and deputy chairperson of the Rule Committee

- (1) The Senior Member is to be the chairperson of the Rule Committee.
- (2) The Senior Member is to appoint another member to be the deputy chairperson of the Rule Committee.

32E Meetings of the Rule Committee

- (1) The procedure for calling meetings of the Rule Committee and for the conduct of business at those meetings is, subject to any procedure that is prescribed by or under this Act, to be as determined by the Rule Committee.
- (2) Three members of the Rule Committee are to form a quorum and any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has all the functions of the Rule Committee.
- (3) The chairperson of the Rule Committee or, in the absence of the chairperson, the deputy chairperson of that Committee is to preside at a meeting of that Committee.
- (4) In the absence from a meeting of the Rule Committee of both the chairperson and the deputy chairperson another member of the Rule Committee elected by the members present is to preside at the meeting.
- (5) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of that Committee.
- (7) The Senior Member is to call the first meeting of the Rule Committee in such manner as the Senior Member thinks fit and, subject to any decision of that Committee under subsection (1), may call other meetings of that Committee as and when the Senior Member thinks necessary.

- (8) The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Rule Committee for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Rule Committee.

32F Secretary to the Rule Committee

- (1) Subject to and in accordance with Part 2 of the *Public Sector Management Act 1988*, a person is to be appointed to hold office as the Secretary to the Rule Committee.
- (2) The appointment of a person under subsection (1) is subject to the prior approval of the Senior Member.
- (3) A person may hold office under subsection (1) in conjunction with some other office or position in the Public Service.
- (4) The Secretary to the Rule Committee has and may exercise and discharge such functions as may be specified in the rules or as the Rule Committee may determine.

[12] Section 33 Rules

Omit section 33 (1) and (2).

[13] Section 33

Omit "Governor" from section 33 (3).
Insert instead "Rule Committee".

[14] Section 33

Insert after section 33 (4):

- (5) The rules may, with any adaptations specified in the rules, adopt by reference any rules made under the *Supreme Court Act 1970*.

[15] Section 37

Insert after section 36:

37 Savings, transitional and other provisions

Schedule 3 has effect.

[16] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings, transitional and other provisions

(Section 37)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Courts Legislation Amendment Act 1995
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of publication.

2 Rules

The Rules made under this Act (other than rule 4 of the *Dust Diseases Tribunal Rules*) and in force immediately before the commencement of Schedule 4 (13) to the *Courts Legislation Amendment Act 1995* are taken to be rules made by the Rule Committee.

Explanatory note—items (10)–(16)

The proposed amendments establish a Rule Committee so that the Tribunal will have the same ability as other civil courts to control its own procedure.

Amendments—mediation and neutral evaluation

[17] Part 3B

Insert before Part 4:

Part 3B Mediation and neutral evaluation

32G Purpose of Part

- (1) The purpose of this Part is to enable the Tribunal to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.
- (2) This Part does not prevent:
 - (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part, or
 - (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*.

32H Meaning of *mediation* and *neutral evaluation*

- (1) For the purposes of this Part, *mediation* means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

- (2) For the purposes of this Part, *neutral evaluation* means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of compensation.

32I Other definitions

In this Part:

evaluator means a person to whom the Tribunal refers a matter for neutral evaluation under this Part.

mediation session means a meeting arranged for the mediation of a matter under this Part.

mediator means a person to whom the Tribunal refers a matter for mediation under this Part.

neutral evaluation session means a meeting arranged for the neutral evaluation of a matter under this Part.

32J Referral by Tribunal

- (1) The Tribunal may, by order, refer a matter arising in proceedings before it for mediation or neutral evaluation if:
- (a) the Tribunal considers the circumstances appropriate, and
 - (b) the parties to the proceedings consent to the referral, and
 - (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.
- (2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

32K Mediation and neutral evaluation to be voluntary

- (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

- (2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

32L Costs of mediation and neutral evaluation

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

32M Agreements and arrangements arising from mediation sessions

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

32N Mediators and evaluators

- (1) The Senior Member may compile a list or lists of persons considered by the Senior Member to be suitable to be mediators for the purposes of this Part.
- (2) The Senior Member may compile a list or lists of persons considered by the Senior Member to be suitable to be evaluators for the purposes of this Part.
- (3) Different lists may be compiled for different types of matters or to take account of any other factors.
- (4) A person may be included in a list under this section only if
 - (a) the person consents to being included in the list, and
 - (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

- (5) The Senior Member may amend or revoke any list compiled under this section for any reason that the Senior Member considers appropriate.
- (6) The Senior Member is to review at least annually any list compiled under this section.

32O Privilege

- (1) In this section, *mediation session* or *neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
 - (a) a mediation session or neutral evaluation session, or
 - (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Tribunal or the office of the registrar, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
 - (a) at a mediation session or neutral evaluation session, or
 - (b) as provided by subsection (2) (b), or
 - (c) as provided by section 32P.
- (4) Evidence of any thing said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
 - (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 32P (c).

32P Secrecy

A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

32Q Exoneration from liability for listed mediators and evaluators

No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

32R Regulations for the purposes of this Part

The Governor may make regulations for the purposes of this Part.

[18] Section 33 Rules

Insert after section 33 (4) (a):

- (a1) regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 3B, and

Explanatory note—items (17) and (18)

The proposed amendments enable the Tribunal to refer matters in proceedings before it for mediation and neutral evaluation if the parties concerned agree to it.

The amendments make it clear that attendance at and participation in mediation sessions and neutral evaluation sessions are voluntary. A party can withdraw from a session at any time.

The amendments enable the Senior Member of the Tribunal to compile lists of persons suitable to be mediators or evaluators for the purposes of the new provisions. Provisions providing protection from liability for mediators and evaluators are included as well as provisions specifying limited circumstances in which information obtained by mediators and evaluators may be disclosed.

(Items (6)–(9) contain provisions relating to the Senior Member of the Tribunal.)

Amendment—historical evidence and general medical evidence

[19] Section 25 Evidence in proceedings before the Tribunal

Insert after section 25 (2):

- (3) Historical evidence and general medical evidence concerning dust exposure and dust diseases which has been admitted in any proceedings before the Tribunal may, with the leave of the Tribunal, be received as evidence in any other proceedings before the Tribunal, whether or not the proceedings are between the same parties.

Explanatory note—item (19)

The proposed amendment incorporates rule 4 of the *Dust Diseases Tribunal Rules* (which is to be repealed by this Act) in the amended Act.

The proposed subsection permits certain evidence of a general nature that has been admitted in previous proceedings before the Tribunal to be admitted as evidence in later proceedings, whether or not the same parties are involved. This is designed to avoid unnecessary repetition of evidence and to assist in expediting proceedings.

Amendment—proceedings outside NSW

[20] Section 13 Proceedings before the Tribunal

Insert after section 13 (6):

- (7) If the Senior Member is of the opinion that the balance of cost and convenience in the proceedings so requires, the Senior Member may direct that the hearing of the proceedings, or any part of the proceedings, take place outside New South Wales.

Explanatory note—item (20)

The proposed amendment will enable the Tribunal to hear a matter outside the State if, for example, a witness is too ill to travel to the State or the matter involves a multiplicity of witnesses.

Amendment—video link evidence

[21] Section 33 Rules

Insert at the end of section 33 (4) (j):

, and

- (k) regulating the mode in which evidence may be given, including the taking of evidence by video link or any other form of telecommunication from persons not present before the Tribunal.

Explanatory note—item (21)

The proposed amendment will enable rules to be made for the taking of evidence by video link and other forms of telecommunication.

Schedule 5 Amendments relating to Deputy Registrar of Compensation Court

(Section 3)

Compensation Court Act 1984 No 89

[1] Section 3 Definitions

Insert “, the deputy registrar” after “the registrar” in the definition of a *registrar* in section 3 (1).

[2] Section 3

Insert in alphabetical order in section 3 (1):

deputy registrar means the deputy registrar of the Court.

[3] Section 14 Appointment of officers

Insert “a deputy registrar,” after “registrar,” in section 14 (1).

[4] Section 14

Insert “deputy registrar,” after “registrar,” in section 14 (2).

[5] Section 14

Omit “An assistant registrar” from section 14 (3).

Insert instead “The deputy registrar and an assistant registrar”.

[6] Section 14

Insert “the deputy registrar or” after “omitted by” in section 14 (3).

Explanatory note

The proposed amendments provide for the appointment of a deputy registrar.

[Minister's second reading speech made in—
Legislative Council on 31 May 1995
Legislative Assembly on 6 June 1995]