

## DUST DISEASES TRIBUNAL BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Workers' Compensation (Dust Diseases) Amendment Bill 1989 is cognate with this Bill.

The object of this Bill is to provide for the establishment of a tribunal to be known as the Dust Diseases Tribunal of New South Wales, to define the jurisdiction and functions of the Tribunal, and to provide for related matters. The Tribunal will have exclusive jurisdiction to hear and determine claims in tort for negligence and breach of statutory duty relating to death or personal injury attributable to specified dust diseases and other dust-related conditions, including asbestosis and mesothelioma.

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#### PART 1—PRELIMINARY

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** defines certain expressions for the purposes of the proposed Act. Among the expressions defined is "dust-related condition". A "dust-related condition" is defined as a disease specified in Schedule 1 to the proposed Act or any other pathological condition of the lungs, pluera or peritoneum that is attributable to dust.

#### PART 2—CONSTITUTION OF THE TRIBUNAL

**Clause 4** establishes a tribunal to be known as the Dust Diseases Tribunal of New South Wales. The Tribunal is to be a court of record.

**Clause 5** provides for the Tribunal to have a seal.

**Clause 6** provides for the Tribunal to be constituted by a single member.

**Clause 7** provides for the appointment of members of the Tribunal. Only a Judge of the Compensation Court of New South Wales is qualified to be a member of the Tribunal.

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**Clause 8** provides that a member of the Tribunal has the same protection and immunity as a Judge of the Supreme Court.

**Clause 9** provides for the appointment of a registrar and other staff of the Tribunal.

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

**Clause 10** confers on the Tribunal jurisdiction to hear and determine claims of the kinds referred to in clauses 11 and 12. The clause also provides for the Tribunal to have such other jurisdiction as may be conferred on it by or under any other legislation.

**Clause 11** provides for claims by persons for damages arising from dust diseases and other dust-related conditions suffered by them to be made to, and dealt with by, the Tribunal. The clause also provides for claims arising out of the death of such persons to be made to, and dealt with by, the Tribunal.

**Clause 12** provides that, where a claim for damages of the kind referred to in clause 11 is pending in the Supreme Court or the District Court, the claim must be transferred to the Tribunal for hearing and determination. The only case in which such a claim will continue to be heard in the Supreme Court or District Court is if the hearing of the claim had begun in that Court before the commencement of clause 12.

**Clause 13** provides for the Tribunal to hold its proceedings in open court, except where the Tribunal rules provide otherwise. The clause also deals with other matters of a procedural nature, including the fixing of times and places for holding the Tribunal's proceedings and the power to adjourn those proceedings to any time or place.

**Clause 14** provides for the enforcement of judgments or orders by the Tribunal for the payment of money.

**Clause 15** empowers the Tribunal to include in an award of damages interest in respect of the period between the date when the cause of action arose and the date when the damages became payable.

**Clause 16** provides for interest to be paid in respect of damages or any other sum which the Tribunal has adjudged or ordered to be paid but which has not been paid.

**Clause 17** provides for matters relating to parties to proceedings before the Tribunal. Under the clause, the Tribunal will be empowered to join as a party to proceedings before it any person whom it thinks should be a party to those proceedings.

**Clause 18** requires notice of the time and venue of proceedings before the Tribunal to be given to the parties.

**Clause 19** provides that in proceedings before the Tribunal a party may appear personally or through a barrister or solicitor.

**Clause 20** provides for the issue of subpoenas to persons to attend proceedings of the Tribunal to give evidence. The clause also provides for the issue of subpoenas requiring persons to produce documents or things in those proceedings.

**Clause 21** provides for the apprehension of a person who fails to appear in answer to a subpoena issued under clause 20.

**Clause 22** empowers the Tribunal to inspect, retain and make copies of documents and statements produced to it.

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**Clause 23** empowers the Tribunal to dispense with the rules of evidence for proving a matter that is not genuinely in dispute and with such rules as might cause expense and delay arising from any commission to take evidence. The clause also empowers the Tribunal to require parties to make admissions with respect to any document or to any question of fact.

**Clause 24** empowers the Tribunal to authorise the taking of evidence outside the Tribunal in certain circumstances, such as when a witness is absent from New South Wales or is expected to die.

**Clause 25** provides for the admissibility of evidence in proceedings before the Tribunal.

**Clause 26** confers on the Tribunal the same powers to deal with contempt as the Supreme Court has in proceedings before that Court.

**Clause 27** empowers the Tribunal to dismiss frivolous and vexatious proceedings.

**Clause 28** requires the Tribunal provide reasons for its decisions.

**Clause 29** empowers the Tribunal to order payment of costs and provides for the taxing of those costs.

**Clause 30** provides for the service of documents.

**Clause 31** authorises the Tribunal to give procedural directions in cases where the provisions of the proposed Act and the rules of the Tribunal are silent.

**Clause 32** enables a person who is dissatisfied with a decision of the Tribunal to appeal to the Court of Appeal against the decision. If the amount involved is less than \$5,000, an appeal lies only with the leave of that Court.

**PART 4—SUPPLEMENTARY PROVISIONS**

**Clause 33** enables the Governor-in-Council to make rules with respect to the practice and procedure of the Tribunal. Until such rules are made, the rules of court of the Supreme Court, so far as relevant, will apply in relation to proceedings before the Tribunal.

**Clause 34** enables the Governor-in-Council to make regulations providing for the fees to be paid in respect of proceedings before the Tribunal.

**Clause 35** enables the Governor-in-Council to amend Schedule 1 to the proposed Act by adding the name of any disease.

**Clause 36** consequentially amends section 48 of the Supreme Court Act 1970 (Assignment to the Court of Appeal). As a result of the amendment the Court of Appeal will be able to exercise certain supervisory jurisdiction over the Tribunal's proceedings.

**Schedule 1** contains a list of dust diseases. Included in the list are asbestosis and mesothelioma.

**Schedule 2** contains provisions applicable to a member of the Tribunal.

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