

Dust Diseases Tribunal Act 1989 No 63

[1989-63]



New South Wales

Status Information

Currency of version

Historical version for 1 July 2005 to 14 August 2005 (accessed 19 December 2024 at 1:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Dust Diseases Tribunal Amendment \(Claims Resolution\) Act 2005 No 22](#), Sch 1 [4] [6] [8] [10]–[13] and [17] (not commenced)
 - [Civil Procedure Act 2005 No 28](#) (amended by [Dust Diseases Tribunal Amendment \(Claims Resolution\) Act 2005 No 22](#)), Sch 5.15 [2]–[4] (not commenced — Sch 5.15 [4] to commence on the commencement of sec 3 of that Act, or on the commencement of Part 3.2 of the [Legal Profession Act 2004](#), whichever is the later)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 July 2005

Dust Diseases Tribunal Act 1989 No 63



New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Definitions	5
Part 2 Constitution of the Tribunal	6
4 Tribunal to be established as a court of record	6
5 Tribunal to have a seal	6
6 Single member to constitute the Tribunal	6
7 Members of the Tribunal	7
7A Vacancy in office of or absence of President	7
7B Acting President	7
8 Immunity of member	8
9 Staff of the Tribunal to be appointed	8
Part 3 Jurisdiction of, and proceedings before, the Tribunal	8
10 Jurisdiction and functions of the Tribunal	8
11 Claims for damages for dust diseases etc to be brought under this Act	9
11A Award of provisional damages	10
12 Transfer of proceedings from the Supreme Court or District Court to the Tribunal	10
12A No limitation period	11
12B Damages for non-economic loss after death of plaintiff	11

12C Effect of settlement on proceedings by or against joint and several tortfeasors	12
12D Damages for non-economic loss not to be reduced by certain compensation payments	12
13 Proceedings before the Tribunal	13
14 Judgments and orders for payment of money	13
15 Tribunal may order the payment of interest before damages become payable	14
16 Interest normally payable in respect of unpaid damages	14
17 Parties to proceedings before the Tribunal	15
18 (Repealed)	15
19 Right of appearance and representation before the Tribunal	15
20 Subpoenas and examination of witnesses	16
21 Person issued with a subpoena may be apprehended	17
22 Inspection and retention of records	17
23 Informal proof and admissions	17
24 Examination de bene esse	18
25 Evidence in proceedings before the Tribunal	19
25A Material already obtained	19
25B General issues already determined	19
26 Contempt of the Tribunal	20
27 Dismissal of frivolous etc proceedings	20
28 (Repealed)	20
29 Tribunal may award costs	20
30 Service of documents	21
31 Tribunal may give procedural directions in certain cases	21
32 Right of appeal to Supreme Court	21
Part 3A Rule Committee	21
32A Establishment of the Rule Committee	22
32B Composition of the Rule Committee	22
32C Deputies for barrister and solicitor members	22
32D Chairperson and deputy chairperson of the Rule Committee	23
32E Meetings of the Rule Committee	23
32F Secretary to the Rule Committee	23
Part 3B Regulations—claims management and practice and procedure ..	24
32G Definitions	24

32H Regulations to promote claims resolution	24
32I Information about claims	26
Part 4 Supplementary provisions	27
33 Rules.....	27
34 Regulations: Tribunal fees.....	29
34A Application of Supreme Court (Fees and Percentages) Regulation 1993	29
35 Power to add diseases to Schedule 1	29
36 Proceedings for offences	29
37 Savings, transitional and other provisions.....	30
Part 5 Arbitration	30
38 Arbitration for insurance purposes	30
39 Other statutory provisions not affected	31
Part 6 Interim payments	31
Division 1 Preliminary	31
40 Definitions	31
Division 2 Interim payments, where no inter-insurer dispute.....	31
41 Interim payments before assessment of damages, where no inter-insurer dispute	31
Division 3 Interim payments, where inter-insurer dispute.....	31
42 Definition	31
43 Interim payments before or after assessment of damages where inter-insurer dispute.....	32
44 Interim payment not admission of liability, where inter-insurer dispute.....	32
45 Adjustments, where inter-insurer dispute, before assessment of damages.....	32
46 Adjustments, where inter-insurer dispute, after assessment of damages	33
Schedule 1 Prescribed dust diseases	33
Schedule 2 Provisions applicable to a member of the Tribunal.....	34
Schedule 3 Savings, transitional and other provisions	34

Dust Diseases Tribunal Act 1989 No 63



New South Wales

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.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(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.

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

District Court means the District Court of New South Wales established by the *District Court Act 1973*.

damages includes further damages awarded under section 11A.

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.

President means the President of the Tribunal.

registrar means the registrar of the Tribunal.

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

rules means the rules of the Tribunal and the regulations in force under this Act and the uniform rules in force under the [Civil Procedure Act 2005](#).

settlement, when used in relation to a claim, includes compromise or agreement.

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

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.

(3) Notes included in this Act do not form part of this Act.

Part 2 Constitution of the Tribunal

4 Tribunal to be established as a court of record

- (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.

5 Tribunal to have a seal

- (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.

6 Single member to constitute the Tribunal

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

7 Members of the Tribunal

- (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 a member of the Tribunal if the person is a Judge of the District 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.
- (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 President of the Tribunal.
- (3B) Subject to subsection (3C), the President is to hold office as President so long as he or she holds office as a member.
- (3C) With the approval of the Governor, the President may resign his or her office as President without resigning his or her office as a member.
- (4) Schedule 2 has effect with respect to a member.

7A Vacancy in office of or absence of President

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

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

8 Immunity of member

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.

9 Staff of the Tribunal to be appointed

- (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

10 Jurisdiction and functions of the Tribunal

- (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) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 471B and 500 (2) of that Act:
 - (a) proceedings under section 11 of this Act,
 - (b) proceedings transferred under section 12 of this Act,

being proceedings that, but for this subsection, could not be commenced or proceeded with without the leave of the Court referred to in section 471B or 500 (2) of the *Corporations Act 2001* of the Commonwealth.

Note—

In the absence of this subsection, sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth would require the leave of the Federal Court or the Supreme Court to commence or proceed with proceedings under this Act against certain companies that are being externally administered. This section ensures that section 5F of that Act will operate to ensure that those sections will not require the leave of the Court directing the external administration before proceedings can be commenced or proceeded with in the Tribunal.

- (7) Proceedings to which subsection (6) refers are declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth as if a reference in those sections to the Court were a reference to the Tribunal.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

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

(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.

- (1A) Proceedings by any tort-feasor liable in respect of damages referred to in subsection (1) to recover contribution from any other tort-feasor liable in respect of that damage may be brought before the Tribunal.

Note—

This subsection does not prevent those proceedings being brought in another court.

- (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.
- (3) If the cause of action giving rise to proceedings to be brought under subsection (1) or (1A) 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) or (1A) may also be included in those proceedings.
- (5) In subsection (1) (c), the reference to a person claiming through a person who is or was suffering from a dust-related condition includes a reference to a relative for whose benefit an action may be brought under the [Compensation to Relatives Act 1897](#).

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.

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

- (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.

12A No limitation period

(1) The purpose of this section is to enable proceedings to be brought before the Tribunal in relation to dust-related conditions at any time.

(2) Nothing in the *Limitation Act 1969* or any other statute of limitations operates to prevent the bringing or maintenance of proceedings before the Tribunal in relation to dust-related conditions.

(3) Without limiting subsection (2):

(a) sections 14, 18A, 60C and 60G of, Division 6 of Part 2 of, and Schedule 5 to, the *Limitation Act 1969* do not prevent the bringing or maintenance of any such proceedings before the Tribunal, and

(b) any such proceedings may be brought or maintained before the Tribunal even though a limitation period has already expired under that Act, and

(c) any such proceedings may be brought or maintained before the Tribunal as if Division 1 of Part 4 of that Act had never been in force.

12B Damages for non-economic loss after death of plaintiff

(1) The purpose of this section is to enable the estate of a person whose death has been caused by a dust-related condition to recover damages for the person's pain or suffering, or for any bodily or mental harm suffered by the person, or for curtailment of the person's expectation of life, provided proceedings commenced by the person were pending before the Tribunal at the person's death.

(2) Section 2 (2) (d) of the *Law Reform (Miscellaneous Provisions) Act 1944* does not

apply in relation to proceedings commenced by a person before his or her death and pending before the Tribunal at his or her death, where the cause of action is for damages in respect of a dust-related condition.

12C Effect of settlement on proceedings by or against joint and several tortfeasors

- (1) For the avoidance of doubt, settlement with one or more joint tortfeasors in or in relation to proceedings before the Tribunal and who are liable in respect of damage as a result of a dust-related condition is not a bar to recovery against one or more other joint tortfeasors (whether or not they are defendants in the proceedings), unless the terms of the settlement otherwise provide.
- (2) A tortfeasor who settles proceedings before the Tribunal that are brought against the tortfeasor by a plaintiff in respect of damage as a result of a dust-related condition is not precluded from recovering contribution in respect of that same damage under section 5 (1) (c) of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#) from any other tortfeasor (whether a joint tortfeasor or otherwise) who is not a party to the settlement only because a judgment giving effect to that settlement has been entered in favour of the plaintiff without the Tribunal having considered the merits of the case.
- (3) This section does not affect the operation or interpretation of section 5 (1) (a) of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#).

12D Damages for non-economic loss not to be reduced by certain compensation payments

- (1) This section applies to proceedings before the Tribunal (including proceedings on an appeal from the Tribunal) for damages in relation to dust-related conditions.
- (2) In determining damages for non-economic loss in any such proceedings, no deduction is to be made for any amount of compensation already paid or payable, or payable in the future, under the [Workers' Compensation \(Dust Diseases\) Act 1942](#).
- (3) In this section:

damages for non-economic loss means damages or compensation for the following:

- (a) pain and suffering,
- (b) loss of amenities of life,
- (c) loss of expectation of life,
- (d) disfigurement,
- (e) the need for services of a domestic nature or services relating to nursing and attendance which have been or are to be provided to a person by another person, and for which the first person has not paid and is not liable to pay any fee or

charge.

13 Proceedings before the Tribunal

- (1) The Tribunal must hold its proceedings in open court, except to the extent that the rules provide otherwise.
- (2) The President 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.
- (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
 - (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.
- (7) If the President is of the opinion that the balance of cost and convenience in the proceedings so requires, the President may direct that the hearing of the proceedings, or any part of the proceedings, take place outside New South Wales.

14 Judgments and orders for payment of money

- (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.
- (5) Part 8 (Enforcement of judgments and orders) of the *Civil Procedure Act 2005* does not apply to authorise the Tribunal to exercise any function of a court under that Part.

15 Tribunal may order the payment of interest before damages become payable

- (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.

16 Interest normally payable in respect of unpaid damages

- (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.
- (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.

17 Parties to proceedings before the Tribunal

- (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.

18 (Repealed)

19 Right of appearance and representation before the Tribunal

- (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.

20 Subpoenas and examination of witnesses

- (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,

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.
- (7) This section is subject to the regulations.

21 Person issued with a subpoena may be apprehended

- (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.

22 Inspection and retention of records

- (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
 - (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.

23 Informal proof and admissions

- (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.

24 Examination de bene esse

- (1) The Tribunal may, on the application of a party to proceedings before it, authorise:
- (a) any judge, counsel, attorney or commissioner for affidavits, 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*.

25 Evidence in proceedings before the Tribunal

- (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).
- (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.

25A Material already obtained

- (1) Material obtained for the purposes of proceedings before the Tribunal by discovery or interrogatories may:
 - (a) with the leave of the Tribunal, and
 - (b) with the consent of:
 - (i) subject to subparagraph (ii), the party who originally obtained the material or the party's solicitors, or
 - (ii) another person prescribed by the rules,be used in other proceedings before the Tribunal, whether or not the proceedings are between the same parties.
- (2) The rules may provide that subsection (1) does not apply in specified kinds of proceedings or in specified circumstances.

25B General issues already determined

- (1) Issues of a general nature determined in proceedings before the Tribunal (including proceedings on an appeal from the Tribunal) may not be relitigated or reargued in other proceedings before the Tribunal without the leave of the Tribunal, whether or not the proceedings are between the same parties.
- (1A) If an issue of a general nature already determined in proceedings before the Tribunal (the **earlier proceedings**) is the subject of other proceedings before the Tribunal (the **later proceedings**) and that issue is determined in the later proceedings on the basis of the determination of the issue in the earlier proceedings, the judgment of the Tribunal in the later proceedings must identify the issue and must identify that it is an issue of a general nature determined as referred to in this section.
- (2) In deciding whether to grant leave for the purposes of subsection (1), the Tribunal is

to have regard to:

- (a) the availability of new evidence (whether or not previously available), and
 - (b) the manner in which the other proceedings referred to in that subsection were conducted, and
 - (c) such other matters as the Tribunal considers to be relevant.
- (3) The rules may provide that subsection (1) does not apply in specified kinds of proceedings or in specified circumstances or (without limitation) in relation to specified kinds of issues.
- (4) This section does not affect any other law relating to matters of which judicial notice can be taken or about which proof is not required.

26 Contempt of the Tribunal

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.

27 Dismissal of frivolous etc proceedings

- (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.

28 (Repealed)

29 Tribunal may award costs

- (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).

30 Service of documents

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.

31 Tribunal may give procedural directions in certain cases

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.

32 Right of appeal to Supreme Court

- (1) A party who is dissatisfied with a decision of the Tribunal in point of law or on a question as to the admission or rejection of evidence may appeal to the Supreme Court.
- (2) The Supreme Court may, on the hearing of any appeal under this section, remit the matter to the Tribunal for determination by the Tribunal in accordance with any decision of the Supreme Court and may make such other order in relation to the appeal as the Supreme Court sees fit.
- (3) A decision of the Supreme Court on an appeal under this section is binding on the Tribunal and on all parties to the proceedings in respect of which the appeal was made.
- (4) The following appeals under this section may be made only by leave of the Supreme Court:
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal from a final decision, other than an appeal that involves (directly or indirectly) a claim for, or a question relating to, an amount of \$20,000 or more,
 - (d) an appeal from a decision made with the consent of the parties.

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 President of the Tribunal, and
 - (b) no more than 3 are to be members of the Tribunal other than the President, 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 President 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 President.
- (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 President 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 President 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 President is to be the chairperson of the Rule Committee.
- (2) The President 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 President may, subject to any decision of the Rule Committee under subsection (1), call meetings of the Rule Committee as and when the President 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 President.

- (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.

Part 3B Regulations—claims management and practice and procedure

32G Definitions

In this Part:

claim means a claim in proceedings.

proceedings means proceedings in the Tribunal brought or to be brought under section 11 or transferred under section 12.

rules of court means rules under section 33 of this Act or uniform rules under the [Civil Procedure Act 2005](#) applicable to proceedings.

32H Regulations to promote claims resolution

- (1) The Governor may make regulations for or with respect to the following:
 - (a) the establishment of a claims resolution process for claims, with procedures for identifying the issues in dispute between the parties to a claim and the settlement of claims by alternative dispute resolution processes,
 - (b) procedures and presumptions for the apportionment of liability between defendants and cross-defendants in connection with a claim,
 - (c) the making and acceptance of offers of compromise and the consequences by way of costs penalties and costs relief of the rejection of an offer by a party who fails to improve their position at hearing,
 - (d) identifying the issues that remain in dispute when a claim is not settled by the claims resolution process and limiting the determination of the claim in the Tribunal to a determination of those issues,
 - (e) subpoenas to give evidence or to produce any document or thing, including the issue and return of subpoenas and compliance with subpoenas,
 - (f) costs (including disbursements) payable by a party in or in relation to a claim,
 - (g) the practice and procedure to be followed in proceedings and any other matter for or with respect to which rules may be made under this Act,
 - (h) the exclusion of any proceedings or class of proceedings from the operation of any specified provision of the [Civil Procedure Act 2005](#) or the rules made under that

Act,

- (i) the modification of any specified provision of the *Civil Procedure Act 2005* or the rules made under that Act in its application to any proceedings or class of proceedings.
- (2) Without limitation, this section authorises the making of regulations for or with respect to the following:
- (a) the exchange of information between the parties to a claim,
 - (b) the compulsory mediation of claims and the functions, privileges, remuneration, immunities and protections of mediators and parties to mediation,
 - (c) procedures and presumptions for the apportionment of liability between defendants and cross-defendants (including by providing for the making of determinations as to apportionment and for the determination by the Minister of standard presumptions as to apportionment),
 - (d) the appointment of a single claims manager to be responsible for managing and otherwise dealing with a claim on behalf of all defendants and cross-defendants to the claim,
 - (e) determining the issues in dispute between the parties, and the facts and evidence that may be relied on by the parties, for the purpose of the determination by the Tribunal of a claim that has been through the claims resolution process,
 - (f) requiring the parties to a claim and their legal representatives to provide information about or relevant to the claim and any aspect of the claim (including costs and disbursements incurred in connection with a claim),
 - (g) the awarding of costs on a party and party basis, on an indemnity basis, or on any other basis, including costs penalties and costs relief in connection with a contravention of any provision of the regulations,
 - (h) the assessment of costs payable to a legal practitioner in connection with a claim, including by providing for the modification of provisions of the *Legal Profession Act 1987* or the *Legal Profession Act 2004* with respect to the assessment of those costs,
 - (i) suspending the operation of any provision of rules of court and any direction or order of the Tribunal under a provision of this or any other Act or rules of court while a claim is subject to the claims resolution process or other procedures under the regulations or subsequently, pending its determination by the Tribunal.
- (3) The regulations under this section prevail to the extent of any inconsistency between a provision of those regulations and a provision of the *Civil Procedure Act 2005*, rules

of court or any direction or order of the Tribunal made under a provision of this or any other Act or rules of court.

- (4) The provisions of the *Dust Diseases Tribunal Regulation 2001* inserted in that Regulation by the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005* are provisions that are authorised by and made under this section.
- (5) Regulations under this section may apply to all claims or to a particular class or classes of claim.
- (6) The regulations may provide that specified provisions of the regulations under this section are part of the procedural law of the State for the purposes of the determination of any claim.

32I Information about claims

- (1) A legal practitioner who acts for a party on a claim must provide the Registrar with such information concerning the claim as the regulations may require for the purposes of this section.
- (2) If both a barrister and a solicitor act for a party, the obligation to comply with subsection (1) falls on the solicitor and not the barrister.
- (3) A failure by a legal practitioner to comply with this section is capable of being unsatisfactory professional conduct by the legal practitioner.
- (4) If a party to a claim is not represented on the claim by a legal practitioner, the party must provide the information required by this section (as and when a legal practitioner representing the party would be required to provide it).

Maximum penalty: 5 penalty units.

- (5) The Registrar is to maintain a database of the information provided to the Registrar under this section and is to maintain and provide access to that database in accordance with such directions as the Attorney General may give to the Registrar from time to time.
- (6) The Registrar must provide to the Attorney General such reports with respect to information provided to the Registrar under this section as the Attorney General may from time to time direct.
- (7) Any document (other than a report under subsection (6)) that contains information provided to the Registrar under this section, and the database maintained by the Registrar under this Part, are not subject to the *Freedom of Information Act 1989*.
- (8) A person who in the course of the administration of this Act obtains information provided to the Registrar under subsection (1) (not including information included in a report under subsection (6)) must not directly or indirectly make a record of the

information or divulge it to another person except:

- (a) with the consent of the person who provided the information to the Registrar, or
- (b) in connection with the administration or execution of this Act, or
- (c) 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 of the Commonwealth.

Maximum penalty: 50 penalty units.

Part 4 Supplementary provisions

33 Rules

- (1), (2) (Repealed)
- (3) The Rule Committee 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
 - (a1) regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 3B, 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
 - (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
 - (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, 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, and
- (l) requiring a plaintiff to file and serve on other parties a notice of particulars or further particulars of a specified class or description (verified as prescribed by the rules):
 - (i) at the time the plaintiff applies for an expedited hearing or within a specified period before or after making such an application, and
 - (ii) at any other specified stage of the proceedings, and
- (m) where there is more than one alleged tortfeasor:
 - (i) requiring a plaintiff who settles a claim with one or more but not all the alleged tortfeasors (before or after the proceedings were commenced) to file the terms of settlement and particulars of amounts paid under the settlement, and
 - (ii) authorising the disclosure, by the Tribunal or by a member, registrar or officer of the Tribunal, of any terms and particulars filed by a plaintiff to another party to the proceedings, whether or not the terms contain non-disclosure requirements, and
 - (iii) specifying the circumstances in which, and the matters that are to be taken into consideration before which, any such disclosure may be made, and
- (n) empowering the Tribunal to order that all or any of the provisions of section 151AC of the *Workers Compensation Act 1987* do not apply in or in relation to a particular case:
 - (i) on its own motion, or

(ii) on application by a party or by an insurer who is not a party and on its being satisfied as to specified matters.

- (5) The rules may, with any adaptations specified in the rules, adopt by reference any rules made under the *Supreme Court Act 1970*.
- (8) The adoption by the rules by reference of any rules made under the *Supreme Court Act 1970* operates in the case of any such rules that are subsequently repealed (subject to any express provision to the contrary) as an adoption of those rules as in force immediately before their repeal, and continues to operate despite their repeal.
- (9) The provisions of this Act prevail to the extent of any inconsistency between those provisions and a provision of the *Civil Procedure Act 2005* or the *Uniform Civil Procedure Rules 2005*.

34 Regulations: Tribunal fees

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

34A Application of *Supreme Court (Fees and Percentages) Regulation 1993*

- (1) Until they were repealed on 1 September 1993, the *Supreme Court (Fees and Percentages) Regulations* are taken always to have applied to proceedings before the Tribunal in the same way as they applied in relation to proceedings before the Supreme Court.
- (2) Until regulations are made under section 34, the *Supreme Court (Fees and Percentages) Regulation 1993* applies to proceedings before the Tribunal in the same way as it applies to proceedings before the Supreme Court.
- (3) Any payments prescribed by the *Supreme Court (Fees and Percentages) Regulation 1993* and made before the commencement of this section are validated if they would have been valid had this section been in force when the payments were made.

35 Power to add diseases to Schedule 1

- (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.

36 Proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

37 Savings, transitional and other provisions

Schedule 3 has effect.

Part 5 Arbitration

38 Arbitration for insurance purposes

- (1) The rules may make provision for or with respect to the arbitration of disputes as to the liability of insurers as referred to in section 151AC of the *Workers Compensation Act 1987*.
- (2) In particular, the rules may make provision for or with respect to:
 - (a) the appointment of a member, registrar or other officer of the Tribunal, or another person approved by the President, as an arbitrator or referee, and
 - (b) the reference of disputes to arbitration, and
 - (c) the determination of the kinds of premises where arbitrations can be conducted and, if relevant, the provision of the services of officers of the Tribunal and the provision of court rooms and other facilities for the purposes of an arbitration, and
 - (d) requiring the plaintiff and other persons to give evidence at an arbitration, and
 - (e) the joinder of insurers and other persons as parties to the arbitration, including insurers and persons who were not parties to the original proceedings before the Tribunal, and
 - (f) the determination and payment of arbitration fees and expenses (including for example the cost of hiring premises) and the persons by whom the whole or any part of any such fees and expenses are to be paid, and
 - (g) the determination and payment of costs incurred in an arbitration, and
 - (h) the manner in which a determination of an arbitrator may be called in question, and whether or not, or to what extent, a determination may be called in question on a matter of fact or law, and
 - (i) any other matters associated with an arbitration.
- (3) An arbitrator or referee has power to determine issues for the purpose of resolving any such dispute.
- (4) Subject to any rules made under subsection (2) (h), the Tribunal, on application made to it by any party within the period prescribed by the rules, may set aside a determination made by an arbitrator or referee and may:
 - (a) refer the determination back to the arbitrator or referee who made it, or

- (b) revoke the reference to the arbitrator or referee who made the determination and make such order as it thinks fit for the continuance of the matter.

39 Other statutory provisions not affected

Nothing in this Part affects any other Act that enables the reference of actions or other matters to arbitration.

Part 6 Interim payments

Division 1 Preliminary

40 Definitions

In this Part:

designated insurer means a designated insurer referred to in section 151AC of the [Workers Compensation Act 1987](#).

inter-insurer dispute means a dispute referred to in section 151AC of the [Workers Compensation Act 1987](#), whether or not persons who are not insurers are involved.

Division 2 Interim payments, where no inter-insurer dispute

41 Interim payments before assessment of damages, where no inter-insurer dispute

- (1) Without affecting the generality of section 10 (4) of this Act, Division 2 of Part 5 of the [Supreme Court Act 1970](#) applies in relation to proceedings before the Tribunal, as if references in that Division to the Supreme Court were references to the Tribunal.
- (2) That Division extends to proceedings before the Tribunal in relation to any liability of an employer to or in respect of whom section 151AB of the [Workers Compensation Act 1987](#) applies.
- (3) However, that Division does not apply to any claim in respect of which an inter-insurer dispute remains unresolved.

Division 3 Interim payments, where inter-insurer dispute

42 Definition

In this Division:

interim payment means payment of a part or the whole of damages by a designated insurer:

- (a) in accordance with an order of the Tribunal under section 43, or
- (b) voluntarily.

43 Interim payments before or after assessment of damages where inter-insurer dispute

- (1) While an inter-insurer dispute remains unresolved, the Tribunal may, in accordance with this section, order a designated insurer who is a party to the dispute to make one or more payments to the plaintiff of part or the whole of the damages sought to be recovered in the proceedings concerned.
- (2) The Tribunal may make such an order against a designated insurer on the application of the plaintiff at any stage of the proceedings or at any time during the currency of the dispute (whether before or after judgment has been obtained, and whether before or after damages have been assessed).
- (3) The Tribunal may make such an order if:
 - (a) the defendant or the designated insurer has admitted liability, or
 - (b) the plaintiff has obtained judgment against the defendant (whether or not damages have been assessed), or
 - (c) the Tribunal is satisfied that, if the proceedings proceeded to trial, the plaintiff would obtain judgment for substantial damages against the defendant.
- (4) The Tribunal may order a designated insurer to make one or more payments of such amounts as it thinks just but not exceeding:
 - (a) if damages have not been assessed—a reasonable proportion of the damages that in the opinion of the Tribunal are likely to be recovered by the plaintiff, or
 - (b) if damages have been assessed—the amount of damages as assessed.
- (5) In estimating damages that have not been assessed, the Tribunal is to take into account any relevant contributory negligence or any cross-claims on which the defendant may be entitled to rely.

44 Interim payment not admission of liability, where inter-insurer dispute

- (1) The fact that a designated insurer makes one or more interim payments is not of itself an admission of liability by the defendant or the designated insurer.
- (2) The making of, or refusal to make, an order under section 43 is not a finding as to liability in respect of the proceedings.

45 Adjustments, where inter-insurer dispute, before assessment of damages

- (1) This section applies to proceedings in which a designated insurer makes one or more interim payments before damages are assessed.
- (2) The Tribunal or an arbitrator or referee may make such orders with respect to the interim payments as may be just, and in particular may order one or more of the

following:

- (a) the repayment by the plaintiff of all or part of any interim payment, with or without interest,
 - (b) the variation or discontinuance of any such payments,
 - (c) the payment by another party to the proceedings of all or part of any interim payment that the defendant is entitled to recover from that party.
- (3) The Tribunal may make an order under this section:
- (a) in making a final judgment or order, or
 - (b) in granting the plaintiff leave to discontinue the proceedings or to withdraw the claim, or
 - (c) on the application of any party, at any other stage in the proceedings.
- (4) Subject to any direction of the Tribunal, an arbitrator or referee may make an order under this section in the course of an arbitration under section 38, on the application of any party.

46 Adjustments, where inter-insurer dispute, after assessment of damages

- (1) This section applies where a designated insurer makes one or more interim payments after damages are assessed.
- (2) The Tribunal or an arbitrator or referee may make such orders with respect to the interim payments as may be just, and in particular may order reimbursement of the designated insurer by another insurer to the dispute concerned for all or part of any interim payment, with or without interest.
- (3) In making any such orders, the Tribunal or the arbitrator or referee is to have regard to the provisions of section 151AC of the *Workers Compensation Act 1987* and to such other matters as the Tribunal considers to be relevant.
- (4) The Tribunal may make such an order on the application of any party.
- (5) Subject to any direction of the Tribunal, an arbitrator or referee may make such an order in the course of an arbitration under section 38, on the application of any party.

Schedule 1 Prescribed dust diseases

(Sections 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

(Section 7 (4))

1 Effect of appointing a Judge of the District Court to be a member of the Tribunal

- (1) Neither the appointment as a member of the Tribunal of a person who is a Judge of the District 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 District Court who is appointed as a member of the Tribunal may continue to exercise the functions of a Judge of that Court.
- (3) The service, as a member of the Tribunal, of a Judge of the District Court shall, for all purposes, be taken to be service as a Judge of that Court.

2 Vacation of office

A person who holds office as a member of the Tribunal by virtue of being a Judge of the District 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.

Schedule 3 Savings, transitional and other provisions

(Section 37)

Part 1 Preliminary

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

Workers Compensation Legislation Amendment (Dust Diseases and Other Matters)

Act 1998

Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005

- (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.

Part 2 Courts Legislation Amendment Act 1995

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.

Part 3 Courts Legislation Further Amendment Act 1995

3 Appeals

The substitution of section 32 by the *Courts Legislation Further Amendment Act 1995* does not operate to require leave to appeal against a decision of the Tribunal if, when the decision was made, an appeal lay as of right.

Part 4 Courts Legislation Amendment Act 1998

4 Appeals to Supreme Court

Section 32 as in force before the commencement of Schedule 11 to the *Courts Legislation Amendment Act 1998* does not apply to decisions of the Tribunal made before that commencement.

Part 5 Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998

5 Definition

In this Part:

amending Act means the *Workers Compensation Legislation Amendment (Dust Diseases*

and Other Matters) Act 1998.

6 President

- (1) The person holding office as Senior Member of the Tribunal immediately before the commencement of the amendment of section 7 by the amending Act is taken to have been appointed as President.
- (2) Anything done or omitted to be done by, to or in relation to the Senior Member of the Tribunal is taken to have been done or omitted to be done by, to or in relation to the President.
- (3) A reference in any other Act, statutory instrument or other document of any kind to the Senior Member of the Tribunal is taken to be or to include a reference to the President.

7 No limitation period

- (1) Section 12A, which was inserted by the amending Act, applies in relation to causes of action arising before or after the commencement of that section, and extends to proceedings pending at that commencement.
- (2) However, section 12A does not apply in relation to a cause of action to the extent that proceedings on the cause of action have been determined before the commencement of that section.

8 Damages for non-economic loss after death of plaintiff

- (1) Section 12B, which was inserted by the amending Act, extends so that it applies in relation to the following proceedings:
 - (a) proceedings commenced before the commencement of that section and pending at that commencement,
 - (b) proceedings commenced before the commencement of that section, where the person died before 7 May 1998 and the proceedings:
 - (i) were pending at the date of death, and
 - (ii) were still pending on 7 May 1998,
 - (c) proceedings commenced before the commencement of that section, where the person died on or after 7 May 1998 and the proceedings were pending at the date of death.
- (2) Section 12B applies in relation to proceedings commenced after the commencement of that section, whether the cause of action arose before or arises after that commencement.

- (3) However, section 12B does not apply in relation to a cause of action to the extent that proceedings on the cause of action have been determined before the commencement of that section.

9 Application of section 12C on previous settlements

- (1) Section 12C, which was inserted by the amending Act, applies in relation to causes of action arising before or after the commencement of that section.
- (2) Section 12C (2) extends to proceedings pending at that commencement, but does not apply to proceedings that have been settled before that commencement.

10 Damages for non-economic loss not to be reduced by certain compensation payments

- (1) Section 12D, which was inserted by the amending Act, applies in relation to causes of action arising before or after the commencement of that section, and extends to proceedings pending at that commencement.
- (2) However, section 12D does not apply in relation to a cause of action to the extent that proceedings on the cause of action have been determined before the commencement of that section.

11 Material already obtained

- (1) Section 25A, which was inserted by the amending Act, applies in relation to causes of action arising before or after the commencement of that section, but does not apply in relation to proceedings pending at that commencement.
- (2) Section 25A does not apply to material obtained by discovery or interrogatories before the commencement of that section.

12 Issues already determined

- (1) Section 25B, which was inserted by the amending Act, applies in relation to causes of action arising before or after the commencement of that section, but does not apply in relation to proceedings pending at that commencement. However, section 25B does apply to issues that have been or are determined in proceedings pending at the commencement of that section to prevent those issues from being relitigated or reargued, without the leave of the Tribunal, in other subsequent proceedings.
- (2) Subject to any rules to the contrary made under section 25B (3), section 25B applies to issues determined before the commencement of that section.

Part 6 Dust Diseases Tribunal Amendment (Claims Resolution) Act

2005

13 Jurisdiction of Tribunal to determine contribution claims

An amendment of section 11 by the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005* extends to a cause of action that arises before the commencement of the amendment.

14 General issues already determined

Section 25B (1A) as inserted by the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005* extends to a judgment of the Tribunal in proceedings after the commencement of the amendment even if the earlier proceedings referred to in that subsection were determined before that commencement.

15 General operation of amendments

An amendment made by Schedule 1 [4]–[8], [10]–[13] or [15]–[17] of the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005* extends to proceedings in the Tribunal commenced before the commencement of the amendment.