



New South Wales

# Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Dust Diseases Tribunal Act 1989* (**the Act**) and the *Dust Diseases Tribunal Regulation 2001* (**the Regulation**) as follows:

- (a) the Regulation is amended to provide a new **claims resolution process** for claims involving asbestos-related conditions (the main features of which are described below),
  - (b) the Regulation is also amended to provide new procedures for the issue of subpoenas and the making and acceptance of offers of compromise, and for requiring detailed information about the settlement or determination of claims to be provided to the Registrar of the Tribunal,
  - (c) the Act is amended to provide an extensive regulation-making power that will authorise the making of the regulations referred to in paragraphs (a) and (b),
  - (d) the Act is amended to clarify the extent of the jurisdiction of the Dust Diseases Tribunal by providing that the Tribunal's jurisdiction to determine claims for damages in respect of dust-related conditions extends to claims for contribution between tort-feasors liable in respect of any such damages,
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- (e) the Act is amended to require a judgment of the Tribunal to identify issues of a general nature determined on the basis of their determination in earlier proceedings (which prevents issues being relitigated or reargued),
- (f) various provisions of the Act are amended or omitted as a consequence of the proposed *Civil Procedure Act 2005*.

The new claims resolution process under the Regulation has the following features:

- (a) all claims will be subject to the process with some exceptions for urgent cases, removal from the process by agreement or removal for failure to comply with a requirement of the process,
- (b) while a claim is subject to the claims resolution process proceedings in the Tribunal are deferred and the claim is not subject to case management by the Tribunal,
- (c) the plaintiff is required to provide a statement of particulars of the claim and there are fixed time-frames within which cross-claims are required to be made, defendants are required to reply to claims and medical examinations are required to take place,
- (d) claims are subject to compulsory mediation with provision for costs sanctions for failing to participate in mediation in good faith and for unreasonably leaving issues in dispute following unsuccessful mediation,
- (e) provision for the apportionment of liability between defendants for the purposes of the settlement or determination of the plaintiff's claim, including provision for contribution to be determined by a Contributions Assessor if defendants cannot agree on contribution,
- (f) provision for the appointment of a single claims manager to manage and negotiate the settlement of a plaintiff's claim on behalf of multiple defendants,
- (g) special procedures for the return of claims to the Tribunal that have failed to settle,
- (h) costs penalties for failure to comply with a requirement of the claims resolution process.

The Bill also makes consequential amendments to the *Civil Procedure Act 2005* and the *Dust Diseases Tribunal Rules*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, with the exception of the amendments to the *Civil Procedure Act 2005* (which are to commence on assent).

**Clause 3** is a formal provision that gives effect to the amendments to the *Dust Diseases Tribunal Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Dust Diseases Tribunal Regulation 2001* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the *Civil Procedure Act 2005* set out in Schedule 3.

**Clause 6** is a formal provision that gives effect to the amendments to the *Dust Diseases Tribunal Rules* set out in Schedule 4.

## **Schedule 1      Amendment of Dust Diseases Tribunal Act 1989**

**Schedule 1 [2] and [3]** clarify the extent of the jurisdiction of the Dust Diseases Tribunal by providing that the Tribunal's jurisdiction to determine claims for damages in respect of dust-related conditions extends to claims for contribution between tort-feasors liable in respect of any such damages.

**Schedule 1 [9]** requires a judgment of the Tribunal to identify issues determined on the basis of a determination of the issue in previous proceedings in the Tribunal, for the purposes of a provision of the Act that prevents issues of a general nature already determined in proceedings being redetermined.

**Schedule 1 [14]** omits provisions dealing with mediation and neutral evaluation (which are to be replaced by provisions of the proposed *Civil Procedure Act 2005*) and inserts extensive regulation-making powers that will authorise the making of the regulations referred to in Schedule 2.

**Schedule 1 [1], [4]–[8], [10]–[13] and [15]–[17]** make amendments that are consequential on the provisions of the proposed *Civil Procedure Act 2005* and the proposed rules under that Act, and other consequential amendments.

**Schedule 1 [18] and [19]** make amendments of a savings and transitional nature.

## **Schedule 2      Amendment of Dust Diseases Tribunal Regulation 2001**

**Schedule 2 [1] and [2]** make consequential amendments.

**Schedule 2 [3]** inserts new Parts 4–7 into the *Dust Diseases Tribunal Regulation 2001* which deal with:

- (a) the new claims resolution process mentioned in the Overview, and
- (b) new procedures for the issue of subpoenas and the making and acceptance of offers of compromise, and
- (c) requiring detailed information about the settlement or determination of claims to be provided to the Registrar of the Tribunal.

**Schedule 2 [4]** provides for a first directions hearing fee.

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**Schedule 2 [5]** amends the fees payable in connection with the filing of claims.

**Schedule 2 [6]** inserts a Schedule of forms for use as part of the new claims resolution process.

### **Schedule 3      Amendment of Civil Procedure Act 2005**

**Schedule 3** makes consequential amendments to the *Civil Procedure Act 2005*.

### **Schedule 4      Amendment of Dust Diseases Tribunal Rules**

**Schedule 4** makes consequential amendments to the Dust Diseases Tribunal Rules.