

**Submission
No 3**

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE
WORKERS' COMPENSATION (DUST DISEASES) BOARD**

Organisation: DLA Piper Australia

Date received: 13/01/2014

The Director
Standing Committee on Law & Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Our reference

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By Post and Email :
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Dear Sir/ Madam

REVIEW OF THE WORKERS' COMPENSATION (DUST DISEASES) BOARD

We refer to the Committee's invitation to participate in the review of the functions of the Workers' Compensation (Dust Diseases) Board ("**DDB**").

We act for a number of Defendants which regularly appear in common law proceedings commenced by Claimants in the Dust Diseases Tribunal of NSW ("**DDT**"). Those Claimants invariably also apply for statutory benefits under the *Workers Compensation (Dust Diseases) Act 1942*.

In our submission there is only one function which we request the Committee to examine.

INVESTIGATION OF WORKERS' EMPLOYMENT HISTORY BY THE DDB

1. We note that as part of the DDB's initial investigation process, employment history details are taken from the worker.
2. The history is taken orally from the worker by a DDB investigator.
3. As far as we are aware, there is little if any, further investigations conducted by the DDB with regards to the accuracy of the details given by the worker or to corroborate any assertions made.
4. For example, a worker may inform the DDB investigator that he/she suffered exposure whilst employed by employer "X" during a given period.
5. From the large number of files of Claimants which we have reviewed, it appears the only investigations then carried out on behalf of the DDB is to ascertain whether "X" has had prior claims or allegations of exposure made against it by other DDB Claimants.
6. There appears to be no investigations carried out by the DDB with regards to the following:
 - 6.1 Whether or not the actual Claimant was employed by "X".

- 6.2 The precise period of the Claimant's employment.
- 6.3 The nature of the Claimant's employment with "X", if the Claimant was actually employed by "X" and whether that employment resulted in any exposure as asserted.
7. Usually the DDB is the first point of contact by a Claimant once he/she has been diagnosed with an asbestos related disease.
8. In our experience, at the time the Claimant usually makes contact with the DDB he/she is still lucid.
9. Defendants in the DDT do not have the opportunity to investigate the accuracy of any history given by the Claimant to the DDB until proceedings are commenced by the Claimant in the DDT.
10. There often is a lengthy period between submission of a claim by the Claimant to the DDB and the commencement of proceedings in the DDT. During this period the Claimant's physical health often deteriorates, as does his/her memory.
11. Once proceedings are commenced in the DDT, the parties are bound by a strict timetable with regards to the conduct of the proceedings. In particular Defendants have a period of only 10 business days within which to issue cross-claims against third parties.
12. During this period a copy of the DDB file is requested and a Defendant often relies upon the information contained within the file to make forensic decisions with regards to the conduct of its defence and the issuing of cross-claims, particularly against former employers.
13. We have experienced situations where the information which our clients rely upon in the DDB file was in fact inaccurate. For example, a number of Claimants were actually not employed by the employer alleged and/or did not suffer the exposure alleged because of the nature of the duties which he/she undertook with a particular employer.
14. Where the information contained in the DDB file with regards to employment proves to be inaccurate a Defendant incurs significant legal expenses which includes paying the legal costs of the incorrectly joined third party employer.

Recommendation

15. It is imperative that the DDB carry out proper investigations to corroborate any assertions made regarding allegations of employment made by a Claimant.
16. It may be that the DDB will require further resources and/or statutory powers to carry out such investigations. We submit that this is an issue which the Committee review in order to ensure that the DDB has the relevant resources to carry out these investigations.



17. Given the advantage which the DDB has with regards to the timing of its contact with a Claimant (namely early in the disease process), and the time limitations which Defendants have proceedings are commenced in the DDT, we consider these investigations to be necessary in order to ensure that the aims of the Claims Resolution Process in the DDT are met.

We would be obliged if we could remain informed of the outcome of the Committee's review.

Yours sincerely

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