How you can make a claim

Dust Diseases Compensation

NEW SOUTH WALES

Turner Freeman
Lawyers
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We hope you will find this booklet useful

Turner Freeman has tried to provide clear and useful information about asbestos and other dust diseases to help you understand the disease and how you and your family can claim compensation for your condition.

This is our fourth Dust Diseases Compensation brochure. It reflects the increasing incidence of asbestos and other dust diseases in our Australian community.

Our essential message, however, remains the same. It is very important that you seek legal advice quickly after diagnosis of any dust related medical condition before you make a compensation claim.

Since our last edition, we have increased the number of offices where specialist dust diseases compensation advice is available. Our lawyers are now able to meet with you in our offices at Parramatta, Brisbane, Cairns, Adelaide, Newcastle, Wollongong and Sydney.

As always, if you are too ill to travel to one of our offices, we will visit you at home or in hospital.

In this edition, we emphasize that former Australian residents who were exposed to dust in Australia and have now returned to live in their country of origin, eg Greece, Italy or Malta, can still make claims in Australia.

We continue the tradition of maintaining links with law firms in England, Scotland, Northern Ireland, Wales, New Zealand, Canada and the United States. If you were exposed to dust in these places and are now living in Australia, we can help you to make a claim.

It is important that you know we continue to operate on a “no win-no fee” basis and that unless we gain compensation for you, we will not charge for our work.

I hope you enjoy reading our brochure and that you find it useful and interesting.

Armando Gardiman
Managing Partner
Dust Diseases Litigation
How to make a claim

Telephone the Turner Freeman office nearest you – we have offices in Parramatta, Newcastle, Sydney, Wollongong, Adelaide, Brisbane, Cairns – on the toll free 1800 or office phone number (see inside front cover). Explain you have asbestos or another dust disease and you would like to speak to a lawyer. A family member or friend can make the telephone call for you. Please ask if you would like to speak to one of our people in a language other than English. You will be put through to a senior staff member who will ask you some simple questions.

- Your matter will be referred to an appropriate lawyer in our offices and you will be telephoned by the lawyer.
- Depending on how urgent your case is i.e. how ill you are, an appointment will be made for you to see your lawyer in our offices, or the lawyer will visit you at home or in hospital.
- The lawyer will obtain a ‘statement’ from you on how you were exposed to the asbestos or other dust, and how the disease has affected you. After you have told the lawyer what happened it will be typed up, reviewed and corrected if necessary and you will be asked to sign it.
- Whether you have a dust disease which may entitle you to claim for compensation, will be decided by your medical reports. You may be required to attend a medical appointment with a doctor of our choice. We will arrange and pay for the appointment. Once we have received all medical reports your lawyer will write to advise you whether or not you may have a claim and arrange to discuss the claim with you. Usually this can take place on the telephone but if you are very ill your lawyer can come to your home or to hospital.
- If you then decide you wish to go ahead with your claim you must tell (‘instruct’) your lawyer to proceed. Then your lawyer will take the necessary steps to have your claim dealt with by WorkCover, The Dust Diseases Board, the relevant court or the New South Wales Dust Diseases Tribunal. You may have to appear in court personally.
- If your claim is successful you will receive a lump sum payment in compensation. If your case is urgent these procedures can be fast-tracked.

Turner Freeman works on a no win-no fee basis for dust disease claims. Unless you get compensation you will not be charged for our work.

New South Wales
In New South Wales you may be eligible to claim compensation in the New South Wales Dust Diseases Tribunal which is the specialist court set up to hear dust disease cases.

In addition you may also be eligible to receive a pension from the Dust Diseases Board if you worked in New South Wales and suffer from a recognised dust diseases. A Dust Diseases pension is separate from and in addition to any claim in the Dust Diseases Tribunal.

Queensland
In Queensland you may be eligible for compensation from WorkCover, be able to claim compensation in the Queensland courts; or in the New South Wales Dust Disease Tribunal if you were exposed to asbestos or dust in New South Wales

South Australia
In South Australia claims for asbestos conditions are brought in the district court of South Australia.

Other States
Turner Freeman has links with interstate law firms in Australia in those states where it does not have a presence.

Overseas
If you are living overseas but were exposed to asbestos in Australia we can still represent you. Contact us by phone, email or letter.

If you wish to claim in a UK court (England, Scotland or Northern Ireland) or in the United States of America, Canada and New Zealand, Turner Freeman has links with law firms that can assist you.
Dust diseases compensation

Turner Freeman has the largest and the most experienced dust diseases practice in Australia. For twenty years Turner Freeman has represented thousands of victims of dust disease in Australian and overseas courts. We have continued to expand the nature of claims filed on behalf of victims suffering from dust disease and we have litigated numerous test cases that have established important legal precedents changing the prospects for people with dust diseases.

Important victories

- The first product liability claim against an asbestos manufacturer, James Hardie & Coy Pty Limited in Australia.
- The first verdict on behalf of a child born at Wittenoom and exposed to blue asbestos dust in the township.
- The first verdict on behalf of a victim who was working with brake lining materials as a fitter in an engineering firm.
- A succession of successful judgments for workers exposed to asbestos and suffering from lung cancer.
- The first verdict on behalf of a waterside worker suffering from asbestos disease.
- The first verdict on behalf of a victim who contracted mesothelioma from doing home renovations.
- The first successful compensation case for a man who contracted lung cancer as a result of workplace exposure to chromate.

Turner Freeman has the experience and skill to provide the specialised legal services needed by victims of dust disease throughout Australia and overseas.

We represent members of

the Asbestos Diseases Foundation of Australia based at Granville in Sydney; the Queensland Asbestos Related Disease Support Society based in Brisbane; the Asbestos Victims Association of South Australia based in Adelaide; the Australian Manufacturing Workers’ Union in NSW; the Electrical Trades Union of Australia in NSW. Turner Freeman represented the coalition of unions and asbestos support groups at the James Hardie Inquiry.

Referral and support organisations

Asbestos Diseases Foundation of Australia (adfa Inc.)
Suite 3, Ground Floor
AMWU Building
133–137 Parramatta Road
Granville NSW 2142
Tel: 02 9637 8759
Fax: 02 9897 3259
Toll Free: 1800 006 196
www.adfa.org.au
Contact: Mr Barry Robson
Mobile: 0407 235 685
Email: info@adfa.org.au

Illawarra Coordinator
1 Illoowa Crescent
Primbee NSW 2502
Contact: Mrs Shirley Shead
Tel: 02 4274 2150

Newcastle Trades Hall Council
Suite 1, Level 1
Devonshire House
406–408 King Street
Newcastle West NSW 2302
Tel: 02 4929 1162
Fax: 02 4926 1177
Contact: Gary Kennedy
gary@newtradeshall.com

Newcastle and Hunter Asbestos Diseases Society (NHADS)
Contact: Peter Frost
Tel: 0434 837 678
PO Box 361
Newcastle NSW 2300

Australian Manufacturing Workers’ Union (NSW Branch)
133–137 Parramatta Rd
Granville NSW 2142
Tel: 02 9897 2011
Fax: 02 9897 4257
Contact: Dave Henry
Is dust dangerous?

Yes, very dangerous. A wide variety of dusts produce disease, with the most serious dust diseases being those caused by exposure to asbestos and silica.

What are the dust diseases?
The most significant diseases caused by exposure to dust are:
- Aluminosis
- Asbestosis
- Asbestos induced carcinoma
- Asbestos related pleural disease
- Bagassosis
- Berylliosis
- Byssinosis
- Coal dust pneumoconiosis
- Cryptococcosis
- Farmers’ lung
- Hard metal pneumoconiosis
- Mesothelioma
- Occupational asthma
- Silicosis
- Silico-tuberculosis
- Talcosis.

Asbestosis
Asbestosis is a scarring of the spongy part of the lung. It stiffens the lungs and makes them less able to transfer oxygen. The immediate effect is breathlessness usually with exertion, but later, even minimal amounts of exercise can cause breathlessness. The disease tends to progress and severe cases result in death from respiratory failure.

Asbestos related pleural disease
Asbestos related pleural disease is a process that usually begins with an inflammation of the pleura that leads to fluid collecting in the space between the lung and the chest wall. This is also commonly referred to as a benign asbestos related pleural effusion.

The disease normally manifests sooner after asbestos exposure than mesothelioma and is quite different from mesothelioma. Symptoms include shortness of breath and discomfort. When the pleural fluid eventually goes away, the pleura on the lung may become thickened which can compress the lung.

Asbestos induced carcinoma of the lung
This is often referred to as bronchogenic carcinoma. It is recognised as being one of the most common complications of asbestos exposure and it invariably causes death. Asbestos induced carcinoma of the lung is one of the most fatal of the common cancers.

80% of all people who contract bronchogenic carcinoma die within two years of the diagnosis being made. It is not necessary for a worker to have asbestos in order to attribute bronchogenic carcinoma to asbestos exposure. The attribution can be made if there has been sufficient exposure to asbestos dust even if the person was also a smoker.

Pleural mesothelioma
Pleural mesothelioma is a malignant tumour that develops in the pleura. The pleura is a very thin layer of tissue that wraps itself around the lung and lines the inside of the chest wall. Symptoms include a rapid and substantial build up of fluid, pain and breathlessness.

Peritoneal mesothelioma
The abdomen is lined with a similar type of tissue to the pleura. The tissue is called the peritoneum. The first sign of a peritoneal mesothelioma is usually swelling of the abdomen. Apart from a substantial build up of fluid the disease causes discomfort and/or pain and obvious interference with abdominal functions.

Asbestos induced carcinoma of other organs
Asbestos dust has been implicated in cases of renal cell carcinoma and also in cases of cancer of the larynx but it is very difficult to prove at law. Medical and scientific evidence in the area of asbestos induced carcinoma of organs other than the lungs is still in a state of evolution.

Pleural plaques
Pleural plaques are the most common manifestation of past asbestos exposure. They are basically patches of thickened tissue on the surface of the lung.

Pleural plaques cause symptoms including pain in some cases but current medical and scientific knowledge does not support the proposition that pleural plaques predispose victims to other complications such as mesothelioma.

Silicosis
Ordinary silicosis, whether in its simple or complicated stage, is defined by the formation of characteristic hyaline and collagenous nodules. Accelerated silicosis occurs when there are intense exposures and is characterised by the earlier onset and very rapid progression of the disease. Acute silicosis develops after massive exposures and can occur after short periods of exposure. The condition is characterised by the presence of nodules in the lung.

Progressive massive fibrosis
Progressive massive fibrosis is often the end stage of silicosis. It occurs when the silica nodules coalesce into one formation thereby creating an appearance of progressive massive fibrosis.
Victims of dust diseases have two avenues of compensation in New South Wales.

**The Workers Compensation Dust Diseases Board**
This is a Statutory Authority which provides compensation to workers as defined by the Act who have been exposed to dust and are suffering from a dust disease as per the Schedule to the Act.

You do not need to prove any fault on behalf of your employer to obtain compensation from the Workers Compensation Dust Diseases Board. You may need to undergo a medical examination, though medical evidence in documentary form is commonly accepted.

If you are assessed as having contracted an asbestos related disease within the meaning of the Act and are disabled as a result then you will receive a weekly pension dependent upon the level of disability you suffer. As well you will have all your medical, hospital, pharmaceutical and other related expenses paid by the Board.

In some cases funeral expenses may be paid. The Board will, at regular intervals, re-examine you (other than mesothelioma and cancer victims) to see if your condition has deteriorated.

In addition a dependant of a worker who dies from a dust disease is entitled to a substantial lump sum payment and an on-going weekly pension.

**Dust Diseases Tribunal of New South Wales**
New South Wales has a specialist tribunal set up to hear common law claims for victims of dust related diseases, the Dust Diseases Tribunal of New South Wales. The Tribunal is the only court of its kind in the world.

The Tribunal was established to provide effective and speedy processes in dust diseases litigation so claims commenced by people suffering from dust disease can be completed in their lifetime. Most dust diseases litigation involves diseases which are fatal.

If you claim for a malignant disease it will normally take between three and six months from start to finish.

With asbestosis and the other less serious asbestos conditions, you have the choice of either “once and for all” compensation; or "provisional" compensation now, plus the right to go back for more compensation if you get a more serious asbestos illness in the future.

General damages for pain and suffering survive even if the victim dies before judgement so long as proceedings have been commenced in their lifetime.

There is no limitation period for claims brought in the Dust Diseases Tribunal.

The Dust Diseases Tribunal of New South Wales has special evidentiary provisions which allow evidence given in one case of a general historical or medical nature to be used in other cases. This means that rather than taking four to six weeks to run a claim, a trial normally lasts a matter of days.

Since 1 July 2005 claims for asbestos diseases in the Dust Diseases Tribunal are subject to a new claims resolution process. The claims resolution process requires the early exchange of information and compulsory mediation before a matter can come before the Tribunal. For a mesothelioma claim, mediation must occur within 9 to 12 weeks of the Statement of Particulars being filed. Our experience of the claims resolution process to date has been positive, with nearly all cases settling at or before mediation, that is without the need to go to Court.

If you make a common law negligence claim in relation to a terminal condition such as mesothelioma or lung cancer and at the time of diagnosis you were not working, the value of your claim is approximately $200,000 to $250,000 after all costs and disbursements have been paid.

Sufferers with asbestos related diseases in New South Wales can lodge a claim with the Workers Compensation Dust Diseases Board and at the same time can bring a claim at common law. These avenues of compensation are not exclusive.

**Who can you claim against?**
You can claim in the Dust Diseases Tribunal of New South Wales against former employers, occupiers of sites and manufacturers of products.

Since the creation of the Dust Diseases Tribunal in 1989 thousands of claims have been brought on behalf of sufferers of dust related conditions.

They include carpenters, electricians, plumbers, fitters, boiler makers, laggers, jack pick operators, quarry workers, factory workers and home renovators who have been exposed to various dusts including asbestos, silica, talc and even bird droppings.

The victims have suffered from various dust related diseases including asbestos related pleural disease, asbestosis, lung cancer, mesothelioma, silicosis, progressive massive fibrosis, talcosis, cryptococcosis and occupational asthma.

**No win-no fee**
We work on a no win-no fee basis for dust diseases claims. Unless you recover compensation you will not be charged for any work done by our firm or any expenses incurred by us in investigating your claim. Should you fail in your claim for compensation you will be liable for the whole of the other party’s costs; but not for our fees and charges.
Successful claim from Greece

George Xenos came to live in Australia from Greece, as a young man in 1964. He was successful in claiming a substantial lump sum in compensation through the Dust Diseases Tribunal of New South Wales, even though he lived in Greece, because his exposure to silica dust was in New South Wales.

In addition, his pension from the Dust Diseases Board increased because the extra medical examinations needed for the court case proved he was eligible for increased payments.

Mr Xenos’ lawyer at Turner Freeman spoke fluent Greek.

Having lawyers who speak fluent Greek is an enormous advantage. Mr Xenos could not read or write English and has very little spoken English.

In addition, Turner Freeman was able to arrange for him to come to Australia for the court case and return home to Greece again.

The compensation he was awarded by the Dust Diseases Tribunal of New South Wales has been a great help to his wife and his children, who have cared for him during his illness.

It is important to understand that you do not have to live in Australia to make a claim.

He spent the next fifteen years in Greece living in Proastio Patra in the South. Mr Xenos has two children and three grandchildren.

"...dust rose in the air and covered my body. It settled on my hair, on my face, on my clothes, in my pockets....the only way I could get the dust off my hair and body was to wash with Omo washing powder. I would grab it by the handful and rub it in. My hair was so stiff I had to use Brylcream to keep it down," he told the court.

"No one told me that I could get a lung disease from inhaling silica dust." (Silicon Dioxide, which is present in many stones e.g. sandstone.)

By the mid 70s he had to stop work. He had contracted the disease silicosis and progressive massive fibrosis and his breathing had become very difficult.

His wife Chrisoula had to support the family by doing piecework at home for the clothing industry.

"In 1986 I decided to leave Australia and return to Greece. I left... because it was cheaper to live in Greece and we couldn't manage financially.... It was very demoralising."

Working with sandstone
Exposed as a child

Anna Rooney’s only exposure to asbestos was from her late father’s work clothes. From the time of her birth until Anna was six years of age, she lived at her family home, adjacent to the Wangi Wangi Power Station.

Power station construction
Anna’s father was employed as a boilermaker on the construction of the Wangi Wangi Power Station. As he lived next door to work, he came home for lunch each day, picking up and playing with his baby daughter Anna while in work clothes covered with asbestos dust. Nearly 50 years later Anna was diagnosed with the asbestos cancer, mesothelioma. Anna sued her father’s former employer, Babcock & Wilcox (now Babcock Australia Pty Limited) and the Electricity Commission of New South Wales (now Eraring Energy).

Investigating back 50 years
As Anna was a child when she was exposed to asbestos, she could not provide any details of her exposure. A large amount of investigation work was carried out by Turner Freeman who located a number of former workmates of Anna’s father who provided evidence as to his work and exposure to asbestos. Despite initial indications from the Defendants that the matter would be fully contested, the matter settled prior to trial.

Childhood exposure no barrier
Turner Freeman has acted for a number of persons who have contracted mesothelioma in their 30’s and 40’s as a result of childhood exposure to asbestos. Claims can be run even where the client is too young to remember the exposure to asbestos, if family members are witnesses and can provide evidence of the exposure. Turner Freeman’s long history in asbestos litigation means that it has substantial knowledge of exposures to asbestos in Australia that can be used to assist in such cases.

Paul Kraus book on mesothelioma

Well known author and friend of the firm Paul Kraus has written a number of books on surviving mesothelioma including “Prayers, promises and prescriptions for healing” and “Living with Cancer – a survivors guide”.

Paul was diagnosed with mesothelioma in 1997 and credits his wife Sue and a mixture of nutritional, dietary and conventional as well as complementary therapies for his health.

Paul has a new book out “Surviving mesothelioma and other cancers – a patients guide” Paul can be contacted via email paul.kraus@hunterlink.net.au. Paul also has a website that is worth a look www.survivingmesothelioma.com
Bernie was the first person to make a second claim for damages after being diagnosed with a second, different asbestos disease. Bernie suffered from severe asbestos pleural disease and asbestosis since 1996 requiring constant oxygen. In 2007 Bernie was diagnosed with the separate disease mesothelioma. His mesothelioma was not related to his pleural disease or asbestosis. Bernie was exposed to asbestos as a result of his employment with James Hardie at its insulation factory from 1968 to 1974 as a plane operator working on the production of asbestos insulation blocks and pipe sections. The conditions Bernie worked in were horrendous. Bernie described the atmosphere he worked in; “I was often covered in a fine white dust. It was on my face, skin, hair and clothes. There was so much dust on my clothes that I used compressed air to get rid of the dust…. There was so much dust around, that getting dust in my eyes and nose was just a part of the routine.

In 1996 Bernie sued James Hardie in the Dust Diseases Tribunal of New South Wales. Because he was only 54 years of age at the time Bernie, on the advice of his lawyer, Tanya Segelov, commenced and settled his claim on a provisional damages basis. This meant that Bernie was compensated for his pleural disease and asbestosis and he reserved his right to make a claim if he developed another asbestos disease such as mesothelioma or lung cancer. Initially James Hardie refused to settle his claim on a provisional damages basis. Bernie stuck to his guns and his settlement was one of the first provisional damages settlements in New South Wales.

Because Bernie’s asbestosis claim settled on a provisional damages basis, Turner Freeman was able to commence a further claim in relation to his condition of mesothelioma. The further claim sought damages for his condition of mesothelioma as well as exemplary damages, that is damages designed to punish James Hardie for its behaviour in grossly exposing him to asbestos dust when it knew of the dangers in doing so and its conduct in restructuring the company in 2001 to set up a compensation fund that was grossly inadequate to compensate future victims. James Hardie tried to have the claim for exemplary damages struck out. The Dust Diseases Tribunal held that such a claim was available and this was upheld by the New South Wales Court of Appeal. Bernie’s health deteriorated and the Dust Diseases Tribunal expedited his hearing, taking his evidence from his bedside at Concord Hospital. Bernie’s case settled for a confidential sum days before his death.

Over the years Bernie watched may of his friends and colleagues from James Hardie, including his own brother, die of asbestos diseases. As a result Bernie became a tireless campaigner for the rights of asbestos victims and workers in general, particularly during the James Hardie Commission of Inquiry and the fight to ensure that all James Hardie victims receive fair compensation. Bernie became the public face of asbestos victims during the James Hardie Inquiry and was the victims’ representative in negotiations with James Hardie. Bernie’s fearless passion and dedication ensured that James Hardie victims’ right to compensation has been guaranteed for the next 50 years and that the plight of asbestos victims has remained in the forefront of politicians minds and the media. Bernie’s last fight was to ensure that Alimta chemotherapy treatment was put on the PBS and therefore available to all mesothelioma sufferers.

Bernie’s claim highlights the importance of settling claims for benign asbestos diseases on a provisional damages basis. All New South Wales and South Australian plaintiffs have a right to settle their claims on a provisional damages basis. If you settle your claim on a full and final damages basis rather than a provisional damages basis then you can never make another claim, even if you develop mesothelioma or lung cancer. The difference between a settlement on a provisional damages basis and a full and final damages basis is normally about $10,000 to $20,000, that is, if you settle your claim on a full and final basis rather than a provisional damages basis you will receive an extra $10,000 to $20,000 now. You will however give up the right to claim further damages in the vicinity of $100,000 to $250,000 in the event you contract mesothelioma or lung cancer.

A state funeral was held for Bernie on 5 December 2007. It was a fitting farewell for a courageous man and a fighter who fought James Hardie on behalf of all victims up to his dying breath. His passion, determination and humour will be greatly missed by all who knew him, particularly his friends at Turner Freeman.

When ACT resident Elizabeth Thurbon lost her husband Peter to asbestos disease a few years ago, she was not prepared to suffer in silence. Elizabeth sat down and wrote a book about her husband’s illness and death, and the effect on her family. It’s a powerful read that also contains some very useful practical information that people in a similar situation need to know. “Climbing out of the Big Black Asbestos Hole” has been reprinted several times since it was written and is widely distributed by health care professionals. Turner Freeman can provide a copy on request.
At the age of 17 Judge Robert (Bob) Bellear enlisted in the Navy. For the next seven years he worked on various naval ships including the HMAS Cerberus, HMAS Anzac, HMAS Sydney, HMAS Hobart and at the shore base HMAS Kuttabul. Throughout this period, he removed asbestos lagging on steam pipes in the engine and boiler rooms. At night he slept in a hammock slung beneath the asbestos lagging.

**Snow balls**

He and other labour trainees made snow balls out of asbestos scraps. He described this work in an affidavit before the Court. "I wore blue overalls at work. Because of the heat, the overalls were undone to my waist. By the end of a four hour shift I was covered in whitish-grey dust….. It was on my hair, my body and on my overalls". Judge Bob Bellear left the Navy in 1968. Nearly 40 years later, he was diagnosed with lung cancer as a result of the combination of his exposure to asbestos in the Navy and his smoking.

**Mature age student**

After leaving the Navy in 1972, Judge Bob Bellear started to study for his Higher School Certificate part-time. In 1973 he obtained his Higher School Certificate and applied for, and was accepted, to a law degree at the University of New South Wales. In 1978 he graduated from university and on 13 July 1979 was admitted as a barrister in the Supreme Court of New South Wales.

**The advocate**

As a barrister Judge Bellear appeared in criminal, civil, workers’ compensation and family law cases; his main emphasis being criminal trials in the city and county instructed by the Aboriginal Legal Service, which he helped create, Legal Aid Commission and private practitioners.

He acted for traditional land owners in land right claims, was appointed as Counsel assisting the Royal Commission into Aboriginal deaths in custody, and in 1991 a New South Wales Public Defender. On 17 May 1996 he was appointed as a Judge of the District Court. Judge Bob Bellear was the first and only Aboriginal to be appointed as a Judge in Australia.

Throughout his life Bob Bellear was a crusader for justice for Aboriginal people, he was a Director of the Aboriginal Medical Service, Aboriginal Housing Committee, Aboriginal Legal Service, Aboriginal Children’s Service and founding Director of Tranby Co-operative College.

Proceedings were commenced on behalf of Judge Bellear in the Dust Diseases Tribunal of New South Wales. Expedition was sought and granted due to the Judge’s increasingly frail condition. Judge Bellear’s evidence was taken at his home and his matter settled just weeks before his death. Turner Freeman acted for Judge Bob Bellear. Judge Bellear’s case shows the indiscriminate nature of asbestos diseases. He is one of a number of prominent people including the former New South Wales Governor, Sir David Martin, also a former naval officer, who have contracted asbestos disease as a result of exposure to asbestos early in their careers.

Judge Bob Bellear was given a State funeral with the New South Wales Parliament being suspended for the afternoon.

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**A leader of his people**

**The injustice to judge Bellear**

In 1970, a 21-year-old Bob Bellear went to the Royal Navy to serve as a prosector for asbestos compensation. He was given permission to have an asbestos民主 (D einfach) / Chairman, John O’Halloran of the Dust Diseases Tribunal, granted the 'exemption' "despite the fact that asbestos is a cancer-causing substance".

Judge Bellear was given a State funeral on 13 July 1979, with the New South Wales Parliament being suspended for the afternoon. Turner Freeman works on a no win-no fee basis for dust diseases claims. Unless you recover compensation you will not be charged for our work.

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Commonwealth Employees

If you are a current or former Commonwealth employee or former member of the Australian Defence Force you have the following entitlements if your asbestos conditions are attributable to your employment by the Commonwealth or the Australian Defence Force.

Entitlements under the Commonwealth Safety Rehabilitation & Compensation Act, 1988

You may be entitled to a lump sum for permanent impairment, weekly payments of compensation for any work related incapacity, medical expenses and possibly compensation for pain and suffering.

Should you die from an asbestos related condition a dependant may have a right to lodge a claim under the Commonwealth Safety Rehabilitation & Compensation Act, 1988. Your dependant would have to show dependence upon you. There also may be a sum to cover funeral expenses. Amounts may also be payable to your dependent children.

Entitlements under the Veterans’ Entitlements Act, 1986

In certain circumstances ex-members of the Australian Defence Force may have entitlements under the Veterans’ Entitlements Act, 1986. These entitlements result in a pension and not a lump sum.

If you make a common law claim for the same asbestos condition for which you have been accepted by the Department of Veterans’ Affairs, then there could be an effect on your Veterans’ Affairs pension. It could also affect treatment expenses that the Department of Veterans’ Affairs has paid in relation to that asbestos condition. Every case is considered separately.

Negligence action for damages

Where exposure to asbestos occurred prior to 30 November 1988 you may sue for negligence at common law. You are not restricted by the operation of the Commonwealth Safety Rehabilitation & Compensation Act, 1988. Proceedings against the Commonwealth are commenced in the Dust Diseases Tribunal of New South Wales and in other State Courts.

It is important that legal advice is sought by current or former Commonwealth employees before any decision is made about the type of compensation to pursue.

Asbestos compensation in the United Kingdom

If you were exposed to asbestos in the UK and later get an illness caused by asbestos, you can claim compensation in the UK, even if you no longer live there. If you have had contact with asbestos both in the UK and in Australia, you could make separate claims in the UK and Australia.

Court action

You can make a court claim in the UK for mesothelioma, asbestos related cancer, asbestosis and pleural disease.

In the UK a court action will usually be against your employer if you worked with asbestos. If you worked near someone else who used asbestos, you may be able to claim against their employer, or the manufacturer of the asbestos products. If you lived near an asbestos factory, you may have a claim against the factory. Claims can be made against companies which have gone out of business since 1969.

With pleural plaques and the other less serious asbestos conditions, you have the choice of either “once and for all” compensation; or “provisional” compensation now plus the right to go back for more compensation if you get a more serious asbestos illness in the future.

You can get a no win-no fee arrangement for the legal costs of a claim in the UK. This is known as a conditional fee agreement.

UK Government benefits

If you have any asbestos disease except pleural plaques through coming into contact with asbestos at work in the UK at any time since July 1948, you should apply for Industrial Injuries Disablement Benefit.

You can claim for a family member who had an asbestos illness and has died. However you must apply to the Benefits Agency and be appointed as the person appropriate to deal with this within 12 months after the death.

Payment under the Pneumoconiosis, etc (Workers’ Compensation) Act 1979

This is a one-off payment from the Department of Work and Pensions, a UK Government department. You can claim for yourself or for a relative who had an asbestos illness and has died. To get a payment, you must be eligible for Industrial Injuries Disablement Benefit and your employer must have gone out of business and you or your lawyer must not have started a court action for compensation for an asbestos illness. However, it is nearly always worthwhile applying for a 1979 Act payment even if your employer is still in business.

Receiving a payment under the 1979 Act does not stop you starting a court action afterwards.

There are time limits for applying. You should apply as soon as you know you have an asbestos condition. Don’t wait for the outcome of your other claims.

Turner Freeman has been conducting claims in the United Kingdom with the assistance of lawyers in England, Scotland, Northern Ireland and Wales for over 20 years and has assisted British migrants to recover millions of pounds in compensation.
James Hardie Commission of Inquiry

In March 2004 the then Carr New South Wales Government announced a special Commission of Enquiry into the Medical Research and Compensation Foundation established by the James Hardie group to be heard by Commissioner David Jackson.

Poisonous history
James Hardie was the largest manufacturer of asbestos products in Australia, manufacturing asbestos cement building products, insulation products, and asbestos brake linings in New South Wales, Victoria, Queensland, South Australia and Western Australia from 1917 to 1987. In February 2001 James Hardie set up the Medical Research and Compensation Foundation (MRCF). The purpose of the MRCF was to pay off all of James Hardie’s asbestos liabilities. James Hardie put $293m into the fund for all future asbestos liabilities, with any leftover monies to be spent on research.

Despite outcries by unions, victims support groups and Turner Freeman, James Hardie assured the governments, unions, the stock exchange and the public that the MRCF was fully funded and had sufficient funds to meet all legitimate compensation claims anticipated for people injured by James Hardie’s asbestos products. James Hardie then entered into a scheme of arrangement whereby the company left Australia and relocated to the Netherlands leaving asbestos victims access only to the $293m of the MRCF.

The Commission
In December 2003 the New South Wales Government announced an inquiry into the setting up of the MRCF. The Commission sat for nearly 200 hearing days, hearing evidence from James Hardie’s former directors, employees, actuaries and solicitors. Following detailed submissions made by the parties, the Commissioner handed down a two volume report. The Commissioner found that James Hardie established the MRCF for commercial reasons, that is to rid itself of its asbestos liabilities so that it could raise capital and list on the US Stock Exchange. The Commissioner found that the MRCF was massively under-funded, a situation that James Hardie’s CEO, Peter McDonald knew and that the Board ought reasonably to have known. Commissioner Jackson found that James Hardie’s action and that of its CEO, Peter McDonald and CFO, Peter Schaffron, were in breach of the law.

Just prior to the closing submissions, James Hardie made a conditional offer to pay for future asbestos liabilities if the common law system of claims was abolished. This offer was rejected by the New South Wales government, unions and support groups. Following the release of the Commission’s report, and after pressure by governments, unions, media and the public, James Hardie agreed to fund all of its future asbestos liabilities.

Months and months of negotiations then followed between the New South Wales government, unions and asbestos support groups and James Hardie as to the mechanism by which James Hardie would fund its future asbestos liabilities. The agreement was finalised in 2007 with the first payment by James Hardie.

Pro bono
Turner Freeman acted for the coalition of the unions and asbestos support groups at the Commission. Turner Freeman attended at the Commission hearings, cross-examined witnesses and made detailed submissions. Turner Freeman’s partners, Armando Gardiman and Tanya Segelov devoted their time over an eight month period to the Commission of Inquiry. Turner Freeman acted in the Commission on a pro bono basis.

Other services Turner Freeman offers
As well as dust disease litigation Turner Freeman has a range of other specialists working in such diverse areas as employment and industrial relations, family law, personal injury law (including workers compensation and medical negligence), property and conveyancing, wills and estates, local government and planning, commercial law and clubs sports and leisure. Contact your local Turner Freeman office if you need help or advice in any of these areas.

It is important to seek legal advice before you make any claim. Turner Freeman works on a no win-no fee basis for dust diseases claims. Unless you recover compensation you will not be charged for our work.
Exposure Registration Form

If you would like to register any previous exposure to asbestos please fill in this form and return it to us. We will maintain an obligation free file on your behalf at our office.

Name ____________________________________________________________

Address ____________________________________________________________

Date of Birth ___________________________  Telephone ___________________________

Circumstances of Exposure

Place(s) where exposed or if home renovating, address where renovations occurred _________________

Employer (if employment based exposure) / Occupier of site (if contractor) _______________________

Time period of exposure __________________________________________________________________

Product(s) exposed to ____________________________________________________________________

Any precautions taken to prevent exposure?   yes  /  no    (please circle)

Have you made an application to the Dust Diseases Board?   yes  /  no    (please circle)

If so, has your application been accepted?   yes  /  no    (please circle)

Have you been diagnosed with a dust disease?   yes  /  no    (please circle)

If yes, please specify disease __________________________

Have you seen a doctor for your dust disease?   yes  /  no    (please circle)

If yes, provide the Doctors name __________________________

Signature ___________________________    Date _____________________________

Turner Freeman will open a file and take steps to register exposure on an obligation free basis.

If a person has been exposed to asbestos in NSW employment, but has not developed any asbestos disease, it is prudent that their exposure to asbestos be registered and Turner Freeman Lawyers can assist in this regard. If you have been exposed please complete this form and return it to

Turner Freeman Lawyers
PO Box 4084, Parramatta NSW 2124

If you have any questions regarding this form or would like any information regarding compensation entitlements for asbestos exposure please contact us on (02) 8833 2500 or toll free 1800 800 088.
The people at Turner Freeman

Turner Freeman has more than 50 people in its dust diseases litigation department in its Parramatta, Brisbane, Newcastle, Sydney, Adelaide, Maroochydore, Ipswich and Cairns offices. We have five Partners who specialise in dust diseases litigation and a number of associates, lawyers and paralegals with specific expertise. Our senior expert lawyers in New South Wales are:

Armando Gardiman
Overall responsibility for the dust diseases litigation practice of Turner Freeman is with Armando Gardiman, the Managing Partner of the Parramatta office. Armando first acted for an asbestos worker suffering from mesothelioma in 1981. Since then he has acted for more than 1000 people suffering from all types of dust disease but mostly with mesothelioma. For 20 years he has been at the forefront of litigation on behalf of dust diseases victims in Australia. He has direct responsibility for all New South Wales claims.

Tanya Segelov
Since joining Turner Freeman in 1993 Tanya has litigated some of the most difficult and significant dust disease claims in Australia. She specialises in claims arising out of the building industry and has worked extensively in South Australia, where she was the managing partner of the firm’s Adelaide office for several years. In spite of being based at Parramatta, Tanya has litigated the largest number of successful dust disease claims in South Australia of any lawyer in Australia.

Judy Horobin
Judy Horobin was a naval legal adviser for 25 years specialising in asbestos claims before she joined Turner Freeman. She is a Partner at the Parramatta office and now specialises in claims against the Commonwealth Government and Telstra. She has an in depth understanding of the needs of former servicemen and women who have asbestos related diseases as well as civilian dockyard workers from a variety of trades.

Gerard McMahon
Gerard McMahon is the Managing Partner of our Newcastle office. He has a special interest in dust diseases and in particular asbestos related cancers. He represents people from the Hunter Valley and North Coast with asbestos related diseases including carpenters and other tradesmen. He has extensive experience in litigating personal injury claims and has been an Accredited Specialist in personal injury law for 15 years. Gerard is also one of only a few lawyers accredited by the Law Society of NSW as a specialist in Dust Diseases litigation.

Some Turner Freeman landmarks

Phillip Raymond Kirkpatrick v. Babcock Australia Pty Ltd
Phillip Kirkpatrick was employed by Babcock Australia Pty Ltd as a trainee draftsman, draftsman and later as an engineer. He was exposed to asbestos dust and fibre during the course of boiler construction and maintenance work. In November 2006 he became conscious of right sided chest pain and shortness of breath. He underwent investigation and eventually in August 2007 was diagnosed as suffering from right sided pleural mesothelioma. His case proceeded to trial before Judge Curtis of the Dust Diseases Tribunal of New South Wales. Judgment was delivered on 1 April 2009. Judge Curtis awarded total damages in the sum of $1,771,640. Of that amount the sum of $280,000 was awarded for pain and suffering. The amount awarded for pain and suffering is the highest award of damages for pain and suffering by a Judge in a mesothelioma case in Australia. There was no appeal from the judgment by Babcocks.

Albert Charles Dyson v. Johnson & Johnson Pty Ltd
Albert Dyson was employed by Johnson & Johnson Pty Ltd as a storeman. He was required to carry out cleaning work using compressed air to blow down pigeon droppings from the rafters in the store at the factory. Mr Dyson was not provided with proper protective equipment while he was carrying out the work. As a consequence of inhaling dust in the bird droppings he contracted the disease cryptococcosis. He successfully sued his employer Johnson & Johnson Pty Ltd in the Dust Diseases Tribunal of New South Wales and was awarded damages of $533,418.

Vivien Margaret Olson v. CSR Limited and Australian Blue Asbestos Pty Ltd
Vivien Olson was born at the Wittenoom Hospital in September of 1959. She lived in Wittenoom for 27 months until the end of 1961 when her family moved to Sydney. As a baby in the Wittenoom township she was exposed to blue asbestos dust from tailings that were dumped around her parents’ home. In April 1994 Ms Olson contracted mesothelioma. In a groundbreaking judgment the New South Wales Court of Appeal upheld the decision of Judge O’Meally in the Dust Diseases Tribunal of New South Wales and awarded Ms Olson’s estate damages of $613,095.

Anna Rooney v. Eraring Energy & Ors
Anna Rooney’s only exposure to asbestos was from birth to six years of age when her late father worked for Babcock & Wilcox as a boilermaker on the construction of the Wangi Wangi Power Station. Each day Anna’s father came home from work for lunch and hugged and played with his baby daughter while covered in asbestos dust. Anna sued Babcock & Wilcox and the Electricity Commission of New South Wales. A number of worker colleagues of Anna’s father came forward and described the horrific working conditions at the Power Station. The matter settled without going to trial.
The people at Turner Freeman speak nearly a dozen different languages. When we do not have a lawyer who speaks your language, we can access interpreters.