



Compensation for Asbestos-related Diseases in Australia

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Introduction

- Asbestos exposure in Australia occurred as a result of mining, milling, manufacture, product use and environmental exposures.
- As illnesses developed claims for compensation commenced.
- This presentation summarizes the historical course of the litigation process in Australia, the obstacles and problems encountered in achieving compensation for Australian victims and outlines the present systems in place.



Introduction

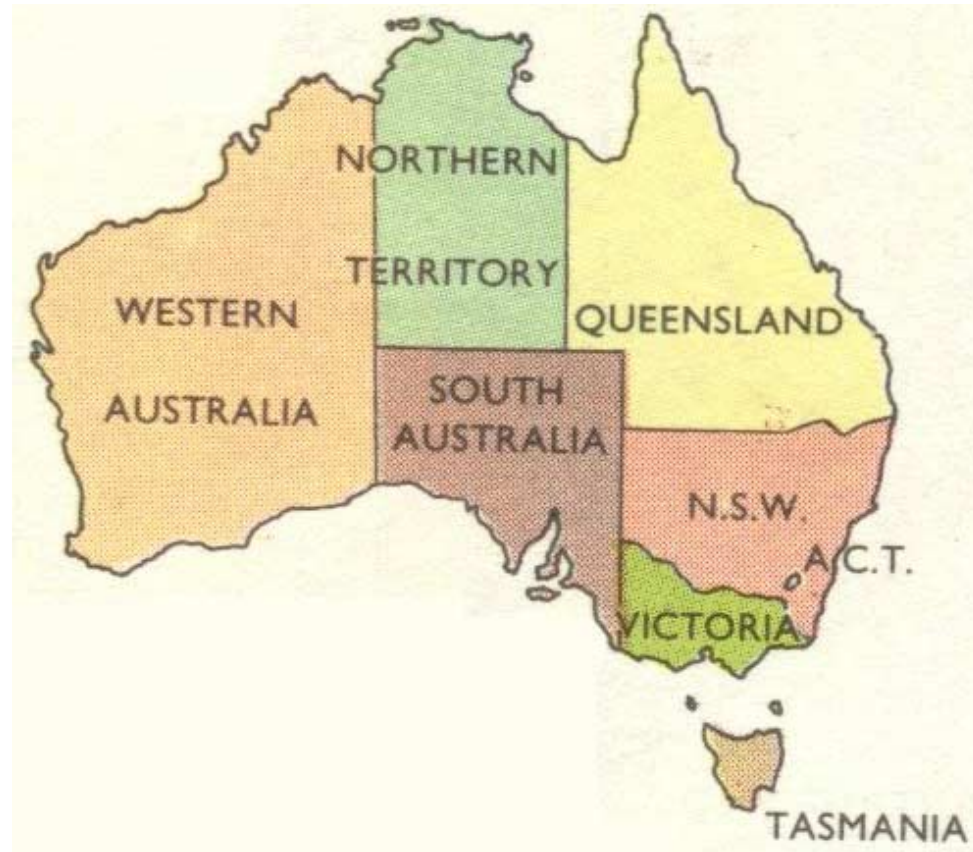
- I completed my legal studies in 1983.
- My introduction to asbestos related disease came about in a brutal fashion.
- In about September October of 1984 my brother in law, who until that time I had never known to be ill, developed a terrible illness that no one seemed to be able to diagnose.
- It was bad not knowing what his illness was but when the illness was named, peritoneal mesothelioma, the news was devastating.



Topics of Discussion

- Australia – a medley of federal and state laws
- Wittenoom – what was it like?
- Early compensation claims
- 1970's
- 1980's
- 1990's - 2000 and beyond

1. Australia – a Medley of Federal and State Laws





Commonwealth

- The Commonwealth no fault benefits scheme covers employees of the Commonwealth Government of Australia e.g. Telecommunications, Postal and Defence employees.
- The no fault benefits scheme which covers these workers is known as Comcare Australia.



Commonwealth

- Common Law entitlements under the Comcare scheme are limited and the scheme requires workers to elect between compensation entitlements under the Comcare Act or Common Law Damages entitlements.
- Biggest obstacle in Comcare claims is the complex legislative framework and the fact that you can't even get into a tribunal or court until claim has been submitted to the government agency for determination and then for reconsideration.



Western Australia

- The no fault benefits workers' compensation scheme is WorkCover Western Australia.
- For many years, workers compensation entitlements were all that asbestos related disease victims could hope to receive because, despite common law damages claims being available, they tended not to be pursued.



Western Australia

- For common law claims asbestos related disease victims faced harsh statute of limitations period with no extension provisions beyond 6 years.
- In 1983 amendments introduced to allow claims for asbestos related disease.
- Since 1993 workers (not just asbestos related disease victims) have seen restrictions on the previously unrestricted right to bring common law claims for damages against negligent employers.



New South Wales

- The no fault workers' compensation scheme is WorkCover NSW.
- For Dust Diseases workers' compensation claimable from Dust Diseases Board.
- Specialist Dust Diseases Tribunal set up in 1989 to hear asbestos related disease common law claims.



New South Wales

- 1998 amendments introduced provisions abolishing the statute of limitations in dust disease matters and other beneficial amendments including the introduction of amendments to survivorship legislation to ensure that entitlements to general damages survive for benefit of family of deceased if victim is unable to see his/her claim through to resolution in own lifetime.



Other States – Victoria, South Australia and Queensland

- Each state has own workers' compensation act and own limitation provisions.
- Like Western Australia no special court or tribunal for asbestos related disease claims but procedures have evolved for fast tracking urgent claims.



Other States – Victoria, South Australia and Queensland

- Victoria has right to jury trial in common law damages claims.
- Victoria has followed NSW's lead in relation to introduction of amendments to survivorship legislation to preserve entitlements to general damages for benefit of family of deceased if victim dies before his/her claim through to resolution in own lifetime.

2. Wittenoom - what was it like?



- Almost 1,500 kms from Perth, Western Australia.
- Isolated, harsh, hot and inhospitable.
- 1943 CSR Limited through a subsidiary company, ABA Limited, commenced mining and milling blue asbestos at Wittenoom.

