

TASMANIA

**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
BILL 2011**

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SCHEDULE 2 – ASBESTOS COMPENSATION COMMISSIONER

**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
BILL 2011**

*(Brought in by the Minister for Workplace Relations, the
Honourable David James O'Byrne)*

A BILL FOR

**An Act to establish a scheme for the payment of
compensation, and certain expenses, related to the
contraction by workers of asbestos-related disease in the
course of their employment, and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Asbestos-Related
Diseases (Occupational Exposure)
Compensation Act 2011*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

THIS BILL IS COGNATE WITH THE *ASBESTOS-RELATED DISEASES (OCCUPATIONAL
EXPOSURE) (CONSEQUENTIAL AMENDMENTS) BILL 2011*

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Part 1 – Preliminary

3. Objects of Act

The objects of this Act are to –

- (a) ensure the provision of fair and appropriate compensation, and the payment of certain expenses, in relation to the contraction by persons of asbestos-related diseases in the course of employment as workers in connection with this State; and
- (b) provide for the prompt and effective resolution of applications under this Act for compensation or for the payment of certain expenses; and
- (c) provide an effective and economical mechanism for resolving disputes relating to applications under this Act for compensation or for the payment of certain expenses; and
- (d) make provision in relation to certain judgments and agreements relating to the contraction by persons of asbestos-related diseases in the course of employment as workers.

4. Application of Act to Crown

- (1) This Act binds the Crown, not only in right of Tasmania but also, so far as the legislative power of Parliament permits, in all its other capacities.

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- (2) Accordingly, this Act applies in respect of a worker employed by or on behalf of the Crown.
- (3) For the purposes of this Act, a police officer is to be taken to be employed by the Crown.

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Part 2 – Interpretative Provisions

PART 2 – INTERPRETATIVE PROVISIONS

Division 1 – General

5. Interpretation

(1) In this Act, unless the contrary intention appears –

“accredited impairment assessor” means a person who is an accredited medical practitioner under the *Workers Rehabilitation and Compensation Act 1988* and who is authorised by his or her accreditation under that Act to perform impairment assessments;

“AMA Guides” has the same meaning as it has in the *Workers Rehabilitation and Compensation Act 1988*;

“application for compensation” means an application made under section 33(1) or (4);

“approved” means approved in writing by the Commissioner;

“asbestos-related disease”, in relation to a person, means a medical condition that is attributable to the person having been exposed to asbestos;

“basic salary” means –

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(a) during the year beginning 1 January 2011, \$696.85; and

(b) during any subsequent year beginning 1 January, the basic salary for the previous year as varied by the relevant percentage;

“Chief Commissioner of the Tribunal” means the person who is, under section 129, the Chief Commissioner of the Asbestos Compensation Tribunal;

“commencement day” means the day on which section 29 comes into force;

“Commissioner” means the Asbestos Compensation Commissioner appointed under section 153;

“Commissioner of the Tribunal” means a Commissioner within the meaning of the *Workers Rehabilitation and Compensation Act 1988*;

“compensation” means compensation referred to in Part 7 or 8;

“compensation units” – see subsection (2);

“contractor” means a person who enters into a contract for the provision of services by the person otherwise than as a worker;

“degree of impairment”, in relation to a person, means the impairment of the

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person because of one or more asbestos-related diseases, assessed at a percentage of the whole person;

“domestic workers compensation insurance policy” means a policy of insurance that indemnifies the policyholder for liabilities under the *Workers Rehabilitation and Compensation Act 1988*, or independently of that Act, in respect of domestic workers;

“employer” means the person with whom a worker has entered into a contract of service or a training agreement and includes –

- (a) the Crown; and
- (b) the employer of any person who is a member of a class of persons who are to be taken to be workers for the purposes of this Act;

“Fund” means the Asbestos Compensation Fund established under section 162(1);

“insurer” means a body corporate authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business;

“levy” means the levy from time to time determined under section 166(1);

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“licensed insurer” means an insurer who holds a licence that is in force under Division 2 of Part IX of the *Workers Rehabilitation and Compensation Act 1988*;

“medical evidence” includes, but is not limited to including, X-rays, pathology results, lung function test results, spirometry test results and histopathological test results;

“medical panel”, in relation to a medical question, means the medical panel established, by the selection of members of the panel under section 51(1), to determine the question;

“medical practitioner register” means the register established under section 50;

“medical professional” means –

- (a) a medical panel; or
- (b) a member of a medical panel; or
- (c) an accredited impairment assessor to whom a medical question is referred under section 45; or
- (d) a medical practitioner to whom a medical question is referred under this Act;

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“medical question” – see section 8;

“medical specialist”, in relation to an asbestos-related disease, means a medical practitioner who specialises in such diseases or the field of medicine in relation to diseases of the part of the body in which the asbestos-related disease occurs;

“member of the family”, in relation to a person, means –

- (a) a spouse of the person; or
- (b) a person who has not attained the age of 22 years and who is –
 - (i) a natural child of the person; or
 - (ii) a child who has been adopted by the person; or
 - (iii) a stepchild of the person who is a member of the family for the purposes of this Act by virtue of section 99(2);

“part-time Commissioner of the Tribunal” means a part-time Commissioner within the meaning of the *Workers Rehabilitation and Compensation Act 1988*;

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“party”, in relation to a proceeding before the Tribunal, means –

- (a) the Commissioner; and
- (b) any person, other than the Commissioner, who has referred to the Tribunal the matter to which the proceeding relates; and
- (c) any person joined as a party in relation to the proceeding by virtue of section 127(4) or section 128(3);

“person who has a compensable disease” – see section 6;

“policyholder” means a person who is required under the *Workers Rehabilitation and Compensation Act 1988* to maintain for the purposes of that Act a policy of insurance other than a domestic workers compensation insurance policy;

“Registrar” means the Registrar of the Tribunal under section 133;

“relevant employment period” – see section 7;

“relevant percentage”, in respect of any year beginning 1 January, means the percentage difference in the average weekly ordinary full-time earnings of

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adults in Tasmania in the period between the May immediately before the start of that year and the immediately preceding May, as evidenced by statistics published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

“self-insurer” means a person who is a self-insurer for the purposes of the *Workers Rehabilitation and Compensation Act 1988*;

“spouse” means –

- (a) in relation to a person who is living –
 - (i) a person to whom the person is married; and
 - (ii) if the person (whether or not he or she is married to a person) is in a significant relationship, within the meaning of the *Relationships Act 2003*, with another person – that other person; or
- (b) in relation to a person who is deceased –
 - (i) the person to whom the deceased person was married immediately

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before the death of the deceased person; and

- (ii) if the deceased person (whether or not he or she was, at the time of his or her death, married to a person) was, immediately before his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*, with another person – that other person;

“State” includes a Territory;

“training agreement” has the same meaning as it has in the *Vocational Education and Training Act 1994*;

“Tribunal” means the Asbestos Compensation Tribunal established under section 129;

“weekly payment”, in relation to a person, means the weekly payment calculated in accordance with Division 3 of Part 7;

“worker” means –

- (a) a worker within the meaning of section 12; and
- (b) any person taken to be a worker for the purposes of this Act.

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- (2) A reference in this Act to a number of compensation units is a reference to the amount obtained by multiplying the basic salary by that number.
- (3) For the purposes of this Act, the exercise and performance of the powers and duties of a local or other public authority is to be taken to be the carrying on by the authority of a trade or business.

6. When person has “compensable disease”

- (1) For the purposes of this Act, a person has a compensable disease if –
 - (a) the person has an asbestos-related disease; and
 - (b) the contraction by the person of the disease is reasonably attributable to exposure to asbestos in the course of the person’s employment as a worker during a relevant employment period in which the person’s employment is connected with this State.
- (2) A reference in this Act to a person who has a compensable disease includes a reference to a person who is deceased and who had, immediately before he or she died, a compensable disease.

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7. Meaning of “relevant employment period”

- (1) In this Act, a reference to a relevant employment period in respect of a person is a reference to a continuous period of employment of that person as a worker by an employer of that person –
 - (a) beginning on the day on which the person is employed by that employer as a worker; and
 - (b) ending on the day on which the person ceases to be employed as a worker by that employer.
- (2) Despite subsection (1), if –
 - (a) the relevant employment period in respect of a person, as determined in accordance with that subsection, includes –
 - (i) a period when the person is in another State for the purposes of that employment; and
 - (ii) a period when the person is in this State for the purposes of that employment for a continuous period of more than 6 months; and
 - (b) the person is, in the course of that employment, exposed in this State to asbestos during the period referred to in paragraph (a)(ii) –

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a reference, in relation to that person, to a relevant employment period in respect of that employment is a reference to the period referred to in paragraph (a)(ii).

- (3) Subsection (4) applies to a person in respect of a relevant employment period if –
- (a) the person is employed by an employer; and
 - (b) the employer sells, transfers, or restructures, the business in respect of which the person is employed; and
 - (c) the person becomes, immediately after the sale, transfer or restructure of the business, an employee of the person to whom the business is sold or transferred or who becomes the employer in respect of the business as restructured.
- (4) If this subsection applies to a person, the person is to be taken to be, for the purposes of this section, continuously employed as a worker by the employer referred to in subsection (3)(a) for the period –
- (a) beginning on the day on which the person is employed as a worker by the employer referred to in subsection (3)(a); and
 - (b) ending on the day on which the person ceases to be employed as a worker by the employer referred to in subsection (3)(c).

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-
- (5) For the purposes of this section, if a person works for an employer on a casual or irregular basis as a worker, each period –
- (a) beginning on the first day, of a period determined in accordance with this subsection, on which the person performs work as a worker in the course of employment by that employer; and
 - (b) ending on the day on which that period of employment as a worker on a casual or irregular basis ends –

is to be taken to be a continuous period of employment of the worker by the employer.

- (6) For the purposes of subsection (5), a period of employment as a worker on a casual or irregular basis ends on the last day on which the person performs work in that employment before the beginning of a continuous period of 3 months in which the worker does not perform on any day work as a worker in the employment of that employer.

8. Meaning of “medical question”

For the purposes of this Act, a medical question in relation to a person means any of the following questions:

- (a) whether the person has an asbestos-related disease;

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- (b) if the contraction by the person of an asbestos-related disease is reasonably attributable to exposure to asbestos in the course of the person's employment as a worker;
- (c) if the person has an asbestos-related disease –
 - (i) whether or not the person is reasonably likely to die within 2 years from the date on which the question is determined; and
 - (ii) if the person is reasonably likely to die within 2 years from the date on which the question is determined, whether the disease is reasonably likely to be a significant factor contributing to the person's death;
- (d) the degree of impairment or incapacity of the person;
- (e) if the person has or had an asbestos-related disease, whether the person may recover from the disease or has so recovered;
- (f) any other question, related to the health of the person, that is relevant to an application for compensation, a claim for expenses under this Act, or an application under section 74, 76 or 79, that relates to the person.

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9. References to certificates as to “imminently fatal” and “non-imminently fatal” diseases

- (1) A reference in this Act to a medical certificate certifying that a person has a non-imminently fatal asbestos-related disease means a certificate, given by a medical specialist, certifying that the medical specialist has examined the person and is of the opinion –
- (a) that the person has an asbestos-related disease; and
 - (b) that –
 - (i) the person is not reasonably likely to die within 2 years from the date on which the certificate is given; or
 - (ii) if the medical specialist is of the opinion that the person is reasonably likely to die within 2 years from the date on which the certificate is given, the asbestos-related disease is not reasonably likely to be a significant factor contributing to the person’s death.
- (2) A reference in this Act to a medical certificate certifying that a person has an imminently fatal asbestos-related disease means a certificate, given by a medical specialist, certifying that the medical specialist has examined the person and is of the opinion that –

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- (a) the person has an asbestos-related disease; and
- (b) the person is reasonably likely to die within 2 years from the date on which the certificate is given; and
- (c) the disease is reasonably likely to be a significant factor contributing to the person's death.

10. References to application for compensation relating to person who has compensable disease

In this Act, a reference to an application for compensation in relation to a person who has a compensable disease is a reference to an application for compensation made by –

- (a) the person who has a compensable disease or who claims in the application to have a compensable disease; or
- (b) a member of the family of –
 - (i) a person who has a compensable disease; or
 - (ii) a person who, it is claimed in the application, has a compensable disease.

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11. Meaning of “evidence of a person’s occupational history”

(1) In this section –

“relevant exposure period”, in relation to a person, means a period, during a relevant employment period, in which it is reasonably likely that the person was exposed to asbestos in the course of employment as a worker.

(2) For the purposes of this Act, evidence of a person’s occupational history means evidence of any of the following:

- (a) the employment of the person in a workplace during a relevant employment period in which a relevant exposure period occurred;
- (b) a relevant exposure period;
- (c) the employment of the person in a workplace during a relevant exposure period;
- (d) the type of work performed by the person at the workplace during a relevant exposure period;
- (e) the product name of the asbestos to which it is alleged the person may have been exposed during a relevant exposure period.

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- (3) Without limiting the evidence that may be provided in respect of a person's occupational history, the following are evidence of a person's occupational history:
- (a) pay slips, group certificates, or other documents, evidencing employment of the person during a relevant employment period and a relevant exposure period;
 - (b) statements of witnesses in relation to –
 - (i) employment, as a worker, of the person at a workplace during a relevant employment period or a relevant exposure period; or
 - (ii) the possible exposure of the person to asbestos at that workplace while so employed during a relevant exposure period;
 - (c) evidence of the person being a member of a trade union during a relevant exposure period, or holding a licence, qualification or other authority to engage in a trade or occupation during a relevant exposure period;
 - (d) statutory declarations or affidavits, sworn by the person, or another person, as to employment by the first-mentioned person in an occupation during a relevant exposure period.

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Part 2 – Interpretative Provisions

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Division 2 – When persons are, or are not, workers

12. When person is a worker

- (1) For the purposes of this Act, a person is a worker if the person is engaged or works under a contract of service or training agreement with an employer.
- (2) Subsection (1) applies in relation to a contract whether the contract is or was express or implied, oral or in writing.
- (3) Subsection (1) applies in relation to manual labour, clerical work or otherwise.

13. Certain contractors and salespeople, &c., to be taken to be workers

- (1) A contractor who –
 - (a) performs work under a contract made with another person; and
 - (b) does not sublet the contract or employ any worker to perform the work; and
 - (c) does not hold his or her own personal accident insurance during the period in which the work is performed –

is to be taken to be, for the purposes of this Act, a worker in the employment of the person while performing the work.

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- (2) Subsection (1) does not apply in relation to a contract in relation to work that is incidental to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name.
- (3) A salesperson, canvasser, collector, or other person, who is paid wholly or partly by commission is to be taken to be, for the purposes of this Act, while engaged in activities to which the payment relates, a worker in the employment of the person by whom the commission is payable.
- (4) Subsection (3) does not apply to a person paid wholly or partly by commission if the commission is received for or in connection with work incidental to a trade or business regularly carried on by the salesperson, canvasser, collector or other person or by a firm of which he or she is a member.

14. Taxi drivers and hire-car drivers to be taken to be workers

- (1) A person who drives a vehicle as a luxury hire car with the consent or authority of a person who holds a licence, or other authority, in this State to operate a luxury hire car is to be taken to be, for the purposes of this Act, a worker employed by the holder of the licence or other authority, while the person is driving the vehicle or performing any associated activity.

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- (2) A person who drives a vehicle as a taxi is to be taken to be, for the purposes of this Act, a worker employed by the holder of a licence or other authority to operate the vehicle as a taxi, while the person is driving the taxi or performing any associated activity.
- (3) For the purposes of this section, a vehicle is operated as a luxury hire car or a taxi if it is a luxury hire car, or taxi, respectively, for the purposes of an enactment of this State as in force at the time the vehicle is so operated.
- (4) This section does not apply to a driver of a luxury hire car or taxi if the driver is also the holder of the licence or other authority.

15. Persons plying vehicles or vessels for hire to be taken to be workers

A person who is engaged in plying for hire with a vehicle or vessel, the use of which is obtained from the owner of the vehicle or vessel under a contract of bailment (other than a hire-purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings of the vehicle or vessel, is to be taken to be, for the purposes of this Act, a worker employed by that owner while so engaged.

16. Jockeys to be taken to be workers

- (1) In this section –

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“racing licence” means a licence or other authority authorising a person to ride horses in races or official trials;

“relevant activity” means training a horse, or engaging in associated activities, in preparation for riding a horse for fee or reward;

“Tasracing” means Tasracing Pty Ltd formed under the *Racing (Tasracing Pty Ltd) Act 2009*.

- (2) A jockey or apprentice is to be taken to be, for the purposes of this Act, a worker employed by Tasracing while performing a relevant activity during a period in which he or she holds a racing licence, if he or she was, at the beginning and end of that period –
- (a) engaged to ride a horse for fee or reward at a race meeting or official trial held in Tasmania; or
 - (b) engaged to ride a thoroughbred horse in a training session in Tasmania conducted by a person authorised under a law of this State to train horses for racing.
- (3) For the purposes of determining any compensation payable to or in respect of a person to whom subsection (2) applies –
- (a) the person is to be taken to have been continuously employed by Tasracing for

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the period during which he or she has continuously held a racing licence; and

- (b) any earnings from riding engagements in another State during the 12 months immediately before the period of his or her application for compensation, or during the period for which he or she held a racing licence, are to be taken to be earnings received in the employment of Tasracing.
- (4) Despite any other provision of this Act, the normal weekly earnings of a person to whom subsection (2) applies are not to be more than 2 times the basic salary.

17. Ministers of religion to be taken to be workers

A minister of religion is to be taken to be, for the purposes of this Act, a worker in relation to the carrying out of his or her activities on behalf of the church.

18. Persons may be prescribed to be workers

A person who is a member of a class of persons that is prescribed for the purposes of this section is to be taken to be, for the purposes of this Act, a worker in relation to the carrying out of an activity prescribed for the purposes of this section.

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19. Volunteers engaged in fire-fighting or fire prevention operations to be taken to be workers

(1) In this section –

“fire-fighting operations” includes –

- (a) any act that is necessary or expedient for or directed towards –
 - (i) extinguishing a fire; or
 - (ii) preventing the spread of a fire; or
 - (iii) saving life or preventing injury to persons by a fire; or
 - (iv) preventing property from being destroyed or damaged by fire; or
 - (v) providing sustenance for persons performing any act referred to in subparagraph (i), (ii), (iii) or (iv); or
 - (vi) taking action to prevent the outbreak of fire; and
- (b) the undergoing of training in relation to all or any acts specified in paragraph (a);

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“fire-fighting person or body” means –

- (a) the Secretary of the responsible Department in relation to the *Fire Service Act 1979*; or
- (b) the State Fire Commission within the meaning of that Act; or
- (c) any brigade within the meaning of that Act;

“fire prevention operations” means any operations carried on, or any work or other acts done, for the purpose of preventing the outbreak of fire or abating the danger of fire, and includes the undergoing of training in relation to any of those operations or acts or that work.

- (2) A person who, as a volunteer, engages in fire-fighting operations or fire prevention operations –
 - (a) with the consent of; or
 - (b) under the authority of; or
 - (c) in cooperation with –

a fire-fighting person or body is to be taken to be, for the purposes of this Act, a worker employed by the Crown while so engaged.

- (3) For the purposes of subsection (2), a person engages in operations mentioned in that subsection as a volunteer only if the person

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engages in the operations otherwise than under a contract for services, a contract of service, or a training agreement, with a fire-fighting person or body.

- (4) For the purposes of this section, any meeting, competition, or demonstration, related to the prevention, control or extinguishment of fires is to be taken to be training.

20. Volunteers engaged in providing ambulance services to be taken to be workers

- (1) In this section –

“ambulance provider” means –

- (a) the Secretary of the responsible Department in relation to the *Ambulance Service Act 1982*; or
- (b) the Director; or
- (c) any officer of the Ambulance Service.
- (2) For the purposes of this section, **“ambulance services”**, **“Director”** and **“officer of the Ambulance Service”** have the meanings assigned to those expressions respectively by section 3 of the *Ambulance Service Act 1982*.
- (3) A person who, as a volunteer, engages in ambulance services –

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-
- (a) with the consent of, under the authority of, or in cooperation with, an ambulance provider; or
 - (b) in pursuance of an arrangement made with the person by the Director in the exercise of the performance of the Director's functions under the *Ambulance Service Act 1982* –

is to be taken to be, for the purposes of this Act, a worker employed by the Crown while so engaged.

- (4) For the purposes of subsection (3), a person engages in ambulance services as a volunteer only if the person engages in the operations otherwise than under a contract for services, a contract of service, or a training agreement, with –
 - (a) the Secretary of the responsible Department in relation to the *Ambulance Service Act 1982*; or
 - (b) the Director.
- (5) References in this section to engaging in ambulance services are to be construed as including references to the undergoing of training or instruction in those services.

21. Police volunteers to be taken to be workers

- (1) In this section –

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“police operations” means –

- (a) marine search and rescue operations within the meaning of the *Marine Search and Rescue Act 1971*; and
 - (b) operations required for the purpose of searching for or bringing to safety –
 - (i) persons in danger in the State; or
 - (ii) persons in need of assistance as a result of a casualty occurring in the State; or
 - (iii) persons suffering from illness or injury in the State who require assistance that is not immediately available to them; and
 - (c) operations required for the purpose of protecting property in the State.
- (2) A person who, as a volunteer, performs police operations with the consent of, under the authority of, or in cooperation with, the Secretary of the responsible Department in relation to the *Police Service Act 2003* is to be taken to be, for the purposes of this Act, a

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worker employed by the Crown while so engaged.

- (3) For the purposes of subsection (2), a person performs police operations as a volunteer only if the person performs the operations otherwise than under a contract for services, a contract of service, or a training agreement, with the Secretary of the responsible Department in relation to the *Police Service Act 2003*.

22. Prescribed classes of volunteers to be taken to be workers

A person who is a member of a class of persons prescribed for the purposes of this section and who, as a volunteer, performs work, of a class prescribed for the purposes of this section, that is of benefit to the State is to be taken to be, for the purposes of this Act, a worker employed by the Crown while so performing the work.

23. Certain persons not to be taken to be workers

A person is not to be taken, for the purposes of this Act, to be a worker while engaged in any of the following employment or programs:

- (a) employment as an outworker;
- (b) employment of a casual nature otherwise than for the purposes of the employer's trade or business;

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- (c) employment as a member of a fishing boat who is remunerated wholly or mainly by a share in the profits of gross earnings in respect of that boat;
- (d) an approved program of work for unemployment payment under the *Social Security Act 1991* of the Commonwealth.

24. Persons who are Commonwealth employees when relevant exposure to asbestos occurred not to be taken to be workers

A person who is a worker by reason only of being a worker under a contract of service or training agreement with the Commonwealth is not to be taken to be, for the purposes of this Act, a worker, other than for the purposes of section 84(3).

25. Sportspeople not to be taken to be workers

A person is not to be taken to be, for the purposes of this Act, a worker while he or she is, under a contract –

- (a) participating as a contestant in any sporting or athletic activity; or
- (b) engaged in training or preparing himself or herself with a view to participating as a contestant in any sporting or athletic activity; or

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- (c) travelling in connection with participating as a contestant in any sporting or athletic activity –

if, under the contract, he or she is not entitled to any remuneration other than remuneration for the doing of those things.

Division 3 – When employment is connected with this State

26. When employment is “connected with this State”

- (1) A worker’s employment is, in respect of a relevant employment period, connected with –
 - (a) the State where the worker usually worked in the employment during that period; or
 - (b) if no State, or no single State, is identified by paragraph (a), the State where the worker was usually based for the purposes of the employment during that period; or
 - (c) if no State, or no single State, is identified by paragraph (a) or (b), the State where the employer’s principal place of business in Australia was located during that period.
- (2) The fact that a worker is outside this State during a relevant employment period does not prevent compensation being payable under this Act, if

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the employment is, during that period, connected with this State in accordance with this Division.

- (3) For a worker working on a ship, if no State, or no single State, is identified by subsection (1), the worker's employment is, while working on the ship in a relevant employment period, connected with –
 - (a) the State where the ship was registered during that period; or
 - (b) if the ship is registered in more than one State during that period, the State where the ship last became registered during that period.
- (4) For the purposes of the calculation of the worker's connection with a State, if no State is identified for a worker by the application of subsections (1) and (3), the worker's employment is connected with this State during a relevant employment period if –
 - (a) it is reasonably likely that the person was exposed to asbestos in the course of the person's employment as a worker in this State; and
 - (b) the worker is not entitled to compensation, in relation to an asbestos-related disease that the worker has, under a law of –
 - (i) an external Territory; or

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- (ii) a place outside Australia –

relating to workers compensation or compensation for asbestos-related diseases.
- (5) In deciding whether a person usually worked in a State during a relevant employment period –
 - (a) regard must be had to the history of the person’s engagement in an occupation including, where applicable to that period, the person’s occupational history during the relevant employment period; and
 - (b) regard must be had to any part of that period during which the worker worked in a State, or was in a State, for the purposes of employment, whether or not the worker is regarded as working or employed in that State under a law relating to workers compensation or compensation for asbestos-related diseases; and
 - (c) regard must not be had to any temporary arrangement under which the worker works in a State for a period of 6 months or less.
- (6) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker’s employment.

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27. Determination of State of connection by Commissioner or Tribunal

- (1) If the question of whether this State is the State of connection arises in a proceeding before the Commissioner or the Tribunal in relation to an application for compensation, the Commissioner or Tribunal must determine the State of connection in accordance with section 26.
- (2) Subsection (1) does not apply if there is a determination of the State of connection that is to be recognised under section 28.
- (3) A person who makes an application for compensation, or the Crown, may refer to the Tribunal for determination the question of which State is the State of connection in relation to the person.
- (4) A referral may not be made under subsection (3) in relation to a relevant employment period if there is a determination of the State of connection that is to be recognised under section 28 in relation to that period.

28. Recognition of previous determinations of State of connection

- (1) This section applies, in respect of a relevant employment period, in relation to a person who has an asbestos-related disease if a determination of the State of connection in relation to the

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relevant employment period is made by any of the following courts or tribunals:

- (a) the Tribunal under section 27;
 - (b) a court or tribunal of a State under a provision of a law of the State corresponding, in whole or in part, to section 27;
 - (c) a court of this State or another State in the course of proceedings on a claim for damages in relation to the period.
- (2) The State determined, in relation to a relevant employment period, as mentioned in subsection (1) in relation to a person is to be recognised for the purposes of this Act as the State of connection in relation to the person for that relevant employment period.
- (3) This section does not prevent any appeal relating to a determination of a court or tribunal referred to in subsection (1).
- (4) If a determination is changed on appeal to a court, the changed determination is to be recognised under this section.

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Part 3 – Entitlement to Compensation

PART 3 – ENTITLEMENT TO COMPENSATION

29. Persons with compensable disease entitled to compensation

(1) Subject to this Act, a person –

- (a) who has a compensable disease; and
- (b) in relation to whom there is a determination under this Act by the Commissioner or the Tribunal that the person has an imminently fatal asbestos-related disease –

is entitled to compensation under this Act.

(2) Subject to this Act, a person –

- (a) who has a compensable disease; and
- (b) in relation to whom –
 - (i) there is a determination under this Act by the Commissioner or the Tribunal that the person has a non-imminently fatal asbestos-related disease; and
 - (ii) there is no determination under this Act by the Commissioner or the Tribunal that the person has an imminently fatal asbestos-related disease –

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is entitled to compensation under this Act if the person's degree of impairment is 10% or more.

- (3) Subject to this Act, the fact that a person has received compensation in relation to an asbestos-related disease because he or she was entitled under subsection (2) to compensation in relation to the disease does not prevent the person being entitled to compensation in accordance with subsection (1) in respect of that asbestos-related disease or any other asbestos-related disease.

30. Entitlement to compensation when person contracts another compensable disease

- (1) A person who has received compensation under this Act in relation to an asbestos-related disease because he or she is entitled to it under section 29(1) is not entitled to further compensation under this Act in relation to a different asbestos-related disease.
- (2) A person who has received compensation under this Act in relation to an asbestos-related disease because he or she is entitled to it under section 29(2) is not entitled to further compensation under section 29(2) in relation to a different asbestos-related disease.
- (3) However, subsection (2) does not prevent a person making an application for compensation that relates to more than one asbestos-related disease.

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- (4) Also, subsection (2) does not prevent a person receiving further compensation by way of –
- (a) a lump sum payable to him or her in accordance with section 75 or 77 wholly or partly because he or she has an asbestos-related disease that is different from the disease in relation to which he or she received compensation referred to in section 29(2); or
 - (b) an increase in the amount of any weekly payments payable to him or her under this Act in accordance with section 80 because his or her degree of incapacity has increased wholly or partly because he or she has an asbestos-related disease that is different from the disease in relation to which he or she received compensation referred to in section 29(2).

31. Members of family of person who has compensable disease entitled to compensation

- (1) A person is a relevant deceased person for the purposes of this section if –
- (a) he or she is a person who has a compensable disease; and
 - (b) he or she dies; and

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- (c) an asbestos-related disease was reasonably likely to be a significant factor contributing to his or her death.
- (2) Subject to this Act, a person is entitled to compensation under this Act if –
- (a) the person is –
 - (i) a member of the family of a compensable person who is a relevant deceased person; and
 - (ii) a person to whom all or part of any compensation payable under this Act may be provided in accordance with Schedule 1 as it applies in relation to the person who is a compensable person; and
 - (b) the relevant deceased person died within 12 months before the commencement day.
- (3) Subject to this Act, a person is entitled to compensation under this Act if –
- (a) the person is –
 - (i) a member of the family of a compensable person who is a relevant deceased person; and
 - (ii) a person to whom all or part of any compensation payable under

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this Act may be provided in accordance with Schedule 1 as it applies in relation to the person who is a compensable person; and

- (b) the relevant deceased person dies after the commencement day.
- (4) A person is not entitled to compensation under this Act in respect of a relevant deceased person who died before 12 months before the commencement day.
- (5) A person who is a member of the family of a compensable person who is a relevant deceased person is not entitled to compensation under this Act in respect of the relevant deceased person if –
- (a) the Commissioner has made a determination under this Act that the relevant deceased person is entitled to an amount of compensation by way of a lump sum that is equivalent to the maximum amount of lump sum compensation in relation to the relevant deceased person; or
 - (b) the Commissioner has made more than one determination under this Act that the relevant deceased person is entitled to an amount of compensation by way of a lump sum and the total of those lump sums is equivalent to the maximum

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amount of lump sum compensation in
relation to the relevant deceased person.

- (6) For the purposes of subsection (5), the maximum amount of lump sum compensation in relation to a relevant deceased person is –
- (a) 360 compensation units; and
 - (b) the number of compensation units determined under whichever of section 72(2)(b) or section 72(4)(b) applied to the relevant deceased person.

32. Assumptions as to exposure as a worker

- (1) If a person who has an asbestos-related disease was employed as a worker for a period (whether or not the period was continuous) of at least 12 months during a relevant employment period in which the person's employment is connected with this State –
- (a) at a workplace at which, at the time of that employment, products containing asbestos were manufactured; and
 - (b) in an occupation in which, it may reasonably be assumed, a person was likely to have been exposed to asbestos in the ordinary course of his or her duties as a worker in the occupation –

the contraction of the disease by the person is to be taken to be reasonably attributable to

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exposure to asbestos in the course of that employment.

- (2) Subsection (1) applies in relation to a person whether or not the person was, or may have been, exposed to asbestos otherwise than in the course of his or her employment as a worker.
- (3) For the purposes of subsection (1), a reference to a workplace at which products containing asbestos were manufactured includes, but is not limited to including, premises, owned or occupied by the manufacturer of the products, at which such products were manufactured, packed, stored or assembled.
- (4) For the purposes of subsection (1), products containing asbestos are manufactured by a manufacturer (“**the principal manufacturer**”) whether the products consist of –
 - (a) an object, containing asbestos, that is manufactured by the principal manufacturer; or
 - (b) an object, containing asbestos, that has been manufactured by another manufacturer but is made into, or forms part of, another object manufactured by the principal manufacturer.
- (5) Nothing in this section is to be taken to limit the circumstances in which the contraction of an asbestos-related disease may be taken to be reasonably attributable to exposure to asbestos in the course of employment.

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PART 4 – APPLICATIONS FOR COMPENSATION

Division 1 – How applications to be made

33. Applications for compensation

- (1) A person who has a compensable disease may make an application for compensation under this Act by lodging with the Commissioner an application in the approved form.
- (2) An application for compensation by a person who has a compensable disease is to be accompanied by –
 - (a) a relevant certificate in relation to the person; and
 - (b) evidence of the occupational history of the person; and
 - (c) other evidence that may be relevant to the determination of whether or not the person has or had an asbestos-related disease; and
 - (d) other evidence in respect of the person's possible exposure to asbestos, whether or not during the course of the person's employment as a worker.
- (3) For the purposes of subsection (2)(a), a relevant certificate in relation to a person is a medical certificate, from a medical specialist, certifying that –

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- (a) the person has a non-imminently fatal asbestos-related disease; or
 - (b) the person has an imminently fatal asbestos-related disease.
- (4) A member of the family of a person who has a compensable disease may make an application for compensation under this Act by lodging with the Commissioner an application in the approved form.
- (5) An application for compensation under subsection (4) in relation to a person who has a compensable disease is to be accompanied by –
- (a) evidence of the occupational history of the person; and
 - (b) evidence that may be relevant to the determination of whether or not the person has or had an asbestos-related disease; and
 - (c) evidence in respect of the person’s possible exposure to asbestos, whether or not during the course of the person’s employment as a worker; and
 - (d) evidence that the person has died and of the date of the person’s death; and
 - (e) evidence, if any, that an asbestos-related disease was reasonably likely to have been a significant factor contributing to the death of the person.

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Part 4 – Applications for Compensation

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34. Applications in relation to imminently fatal disease not required in certain circumstances

- (1) Subsection (2) applies to a person if –
 - (a) the Commissioner has determined under section 70 an application for compensation made by the person and has made under that section a determination that the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has subsequently received from a medical panel a determination under this Act that the person has an imminently fatal asbestos-related disease; and
 - (c) the person is alive at the time the Commissioner receives the determination referred to in paragraph (b).
- (2) If this subsection applies to a person, the Commissioner, as soon as practicable after receiving from a medical panel the determination referred to in subsection (1)(b), must make a determination under section 70 as if –
 - (a) the person had made a further application for compensation under section 33(1) consisting of the application for compensation to which the determination by the Commissioner referred to in subsection (1)(a) relates; and

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- (b) the Commissioner had referred the medical questions in respect of the person to a medical panel in accordance with section 47; and
 - (c) the determination referred to in subsection (1)(b) formed part of a determination made by the medical panel of the medical questions in relation to the person that were referred by the Commissioner to the medical panel in accordance with section 47.
- (3) A person who has a compensable disease and to whom a determination under section 70 that the person has a non-imminently fatal asbestos-related disease relates may provide to the Commissioner a medical certificate, given by a medical specialist, certifying that the person has an imminently fatal asbestos-related disease.
- (4) Subsection (5) applies to a person if –
 - (a) the Commissioner has determined under section 70 an application for compensation made by the person and has made under that section a determination that the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has subsequently received under subsection (3) a medical certificate from the person; and

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- (c) the Commissioner receives the medical certificate referred to in paragraph (b) within 6 months after the certificate is given; and
 - (d) the person is alive at the time the Commissioner receives the medical certificate referred to in paragraph (b).
- (5) If this subsection applies to a person –
- (a) the application for compensation by the person to which the determination by the Commissioner referred to in subsection (4)(a) relates is to be taken to be a fresh application for compensation made by the person under section 33(1); and
 - (b) the medical certificate referred to in subsection (4)(b) is to be taken to be the certificate accompanying the application as required under section 33(2)(a).

35. Application by family members to be made jointly

- (1) Except in accordance with the leave of the Tribunal, an application for compensation by a person who is a member of the family of a person who has a compensable disease is to be made jointly with all other members of the family amongst whom any compensation payable under this Act may be divided in accordance with Schedule 1 as it applies in

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relation to the person who has a compensable disease.

- (2) A person who is a member of the family of a person who has an asbestos-related disease may refer to the Tribunal the question as to whether an application for compensation may be made by the person even though the application is not made jointly with the other persons with whom, in accordance with subsection (1), the application is required to be made.
- (3) The Tribunal may determine that an application for compensation may be made, by a person who is a member of the family of a person who has an asbestos-related disease, otherwise than jointly with the other persons with whom, in accordance with subsection (1), the application is required to be made, if the Tribunal is satisfied that –
 - (a) the other persons cannot be contacted or are unwilling to be joined to the application; or
 - (b) for any other reason, it would be unjust to refuse to permit the application for compensation to be made other than jointly with the other persons.

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Division 2 – Time in which applications to be made

36. If diagnosis of imminently fatal asbestos-related disease occurs before commencement day

- (1) Subsection (3) applies to a person who has a compensable disease if, before the commencement day, a medical specialist has given to the person a medical certificate certifying that the person has an imminently fatal asbestos-related disease.
- (2) However, subsection (1) does not apply to a medical certificate if the diagnosis or prognosis included in the certificate is incorrect.
- (3) A person to whom this subsection applies may only make an application for compensation if the application is made within –
 - (a) 12 months after the commencement day; or
 - (b) a period, if any, determined by the Commissioner or the Tribunal under section 40, that ends after the 12-month period.

37. If diagnosis of imminently fatal asbestos-related disease occurs after commencement day

- (1) Subsection (3) applies to a person if –

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- (a) section 34(2) and section 36(3) do not apply to the person; and
 - (b) on a day after the commencement day, a medical specialist has given to the person a medical certificate certifying that the person has an imminently fatal asbestos-related disease.
- (2) However, subsection (1) does not apply to a medical certificate if the diagnosis or prognosis included in the certificate is incorrect.
- (3) A person to whom this subsection applies may only make an application for compensation in respect of an asbestos-related disease if the application is made within –
- (a) 12 months after the day on which the certificate referred to in subsection (1) in respect of the disease is given to the person; or
 - (b) a period, if any, determined by the Commissioner or the Tribunal under section 40, that ends after the 12-month period.
- (4) If –
- (a) a person who has a compensable disease is given a medical certificate, certifying that the person has an imminently fatal asbestos-related disease, by a medical specialist who has correctly diagnosed

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that the person has an imminently fatal asbestos-related disease; and

- (b) the person is subsequently given another medical certificate, by that medical specialist or another medical specialist, certifying that the person has an imminently fatal asbestos-related disease –

the reference in subsection (3) to the day on which a certificate is given to the person is to be taken to be a reference to the first day on which the person received the certificate referred to in paragraph (a).

38. No time limitation where diagnosis of non-imminently fatal asbestos-related disease

An application for compensation may be made at any time by a person who has a compensable disease, if sections 36 and 37 do not apply to the person.

39. If person who has compensable disease dies

- (1) An application for compensation relating to a person who has a compensable disease and who died within 12 months before the commencement day may only be made by a person who is entitled to compensation under section 31(2) if the application is made within –

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- (a) 12 months after the commencement day;
or
 - (b) a period, if any, determined by the Commissioner or the Tribunal under section 40, that ends after the 12-month period referred to in paragraph (a).
- (2) An application for compensation relating to a person who has a compensable disease and who has died may only be made by a person who is entitled to compensation under section 31(3) if the application is made within –
- (a) 12 months after the death of the person who has a compensable disease; or
 - (b) a period, if any, determined by the Commissioner or the Tribunal under section 40, that ends after the 12-month period referred to in paragraph (a).

40. Extension of time to make application for compensation

- (1) A person may apply to the Commissioner for a determination that an application for compensation may be made by the person within a period that ends after a 12-month period specified in this Division.
- (2) The Commissioner must permit an application for compensation to be made by a person at a period, determined by the Commissioner, that

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ends after a 12-month period specified in this Division, if –

- (a) the failure to make an application within that period was occasioned by mistake; or
 - (b) the person was absent from the State during all of the 12-month period.
- (3) The Commissioner may permit an application to be made under this Act by a person at a period, determined by the Commissioner, that ends after a 12-month period specified in this Division, if the Commissioner is satisfied that there was a reasonable cause for the failure to make an application for compensation within the 12-month period.
- (4) In determining whether there is reasonable cause for the purposes of subsection (3), the Commissioner is to have regard, amongst other things, to –
 - (a) the difficulty that the person may have had in obtaining evidence sufficient to establish whether the person was eligible to make an application for compensation; and
 - (b) whether the person has, within the 12-month period referred to in the relevant section of this Division, taken all reasonable steps to attempt to obtain evidence sufficient to establish whether

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the person was eligible to make an application for compensation.

- (5) A person who has applied for a determination of the Commissioner under this section and who is dissatisfied with the determination of the Commissioner may refer the matter to the Tribunal.
- (6) If a matter is referred to the Tribunal under subsection (5), the Tribunal, if it is of the opinion that –
 - (a) subsection (2) requires the Commissioner to permit an application for compensation to be made within a period; or
 - (b) there was a reasonable cause for the failure to make an application for compensation, having regard, amongst other things, to the matters referred to in subsection (4) –

may permit the application for compensation to be made within a period specified by the Tribunal.

Division 3 – Initial consideration of applications

41. Commissioner may require further information to be provided by applicant

- (1) This section applies in relation to an application for compensation if the Commissioner is not

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satisfied that there is sufficient information available to the Commissioner to enable the Commissioner to determine the application under section 70.

- (2) This section does not apply in relation to information as to the degree of impairment of a person who has an asbestos-related disease.
- (3) The Commissioner may, by notice to a person who has made an application for compensation to which this section applies –
 - (a) request the person to provide to the Commissioner the further information specified in the notice; and
 - (b) specify in the notice a date by which the information must be provided to the Commissioner; and
 - (c) notify the person that –
 - (i) the Commissioner may refuse to consider the application until the further information is provided to the Commissioner; and
 - (ii) the Commissioner may reject the application if the further information is not provided to the Commissioner by the date specified in the notice in accordance with paragraph (b).

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- (4) A date specified in a notice for the purposes of subsection (3)(b) is not to be earlier than 40 business days after the day on which the notice is issued.
- (5) If the Commissioner has issued a notice under subsection (3) to a person requiring the person to provide further information to the Commissioner in relation to an application for compensation –
 - (a) the Commissioner may refuse to consider the application until the further information is provided to the Commissioner; or
 - (b) the Commissioner may reject the application if the information is not provided by the person by the date specified in the notice in accordance with subsection (3)(b).
- (6) The rejection by the Commissioner under subsection (5)(b) of an application for compensation made by a person does not prevent a further application for compensation being made by the person.
- (7) Nothing in subsection (6) is to be taken to extend a period, specified in Division 2, in which an application for compensation must be made.

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42. Rejection of application

The Commissioner may reject an application for compensation if he or she is satisfied that the application is frivolous or vexatious.

43. Rejection of application may be referred to Tribunal

- (1) A person whose application for compensation has been rejected by the Commissioner under section 41(5)(b) or section 42 may refer the matter to the Tribunal.
- (2) If the rejection of an application for compensation is referred to the Tribunal under subsection (1), the Tribunal may –
 - (a) determine that the Commissioner must not reject the application; or
 - (b) refuse to make a determination under paragraph (a).

44. Commissioner to refer assessment of degree of impairment to accredited impairment assessor

- (1) Subject to subsection (6), this section applies to a person who has made an application for compensation if –
 - (a) the person is a person who has a compensable disease; and

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- (b) the Commissioner has not determined the application under section 70; and
 - (c) the application is not accompanied by a medical certificate from a medical specialist certifying that the person has an imminently fatal asbestos-related disease; and
 - (d) the Commissioner has not rejected, or does not intend to reject, the application under section 41(5)(b) or section 42.
- (2) If this section applies to a person who has made an application for compensation, the Commissioner must, before referring the application to a medical panel under section 47, refer under section 45 the medical question as to the degree of impairment of the person to an accredited impairment assessor for determination.
- (3) The Commissioner is to refer the medical question in accordance with subsection (2) within 5 business days after the application for compensation is made by the person to whom the medical question relates.
- (4) If the Commissioner, under section 41(5)(a), has refused to consider an application for compensation by a person to whom this section applies until further information is provided to the Commissioner –

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- (a) subsection (3) does not apply to the medical question as to the degree of impairment of the person; and
 - (b) the Commissioner is to refer the medical question in accordance with subsection (2) within 5 business days after the further information is received.
- (5) If this section applies to a person who has made an application for compensation, the Commissioner may only refer the application to a medical panel under section 47 if the Commissioner, under section 49, also provides to the medical panel a determination under section 45(3) of an accredited impairment assessor to whom the medical question as to the degree of impairment of the person has been referred, to the effect that the person has a degree of impairment of 10% or more.
- (6) This section does not apply in relation to an application for compensation by a person who has a compensable disease if the Commissioner is of the opinion that there are or may be reasons, other than because the person does not have a degree of impairment of 10% or more, for determining under section 70 that the person is not entitled to compensation under this Act.

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**PART 5 – DETERMINATION OF MEDICAL
QUESTIONS**

Division 1 – Accredited impairment assessors

**45. Referral to accredited impairment assessor of
assessment of degree of impairment**

- (1) The Commissioner may refer to an accredited impairment assessor a medical question as to the degree of impairment of a person –
 - (a) who has a compensable disease; and
 - (b) to whom an application for compensation relates.
- (2) An accredited impairment assessor to whom a medical question is referred under subsection (1) is to make a decision in relation to the question within 10 business days after the question is referred to him or her.
- (3) An accredited impairment assessor may decide under subsection (2) the medical question as to the degree of impairment of a person that has been referred to the assessor by the Commissioner under subsection (1) by providing to the Commissioner notice –
 - (a) of the assessor's determination in relation to the medical question; or

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- (b) that the assessor is unable to make a determination in respect of the medical question.
- (4) If the Commissioner receives a notice under subsection (3) that an accredited impairment assessor is unable to make a determination in respect of a medical question referred to the assessor by the Commissioner, the Commissioner is to refer the question to another accredited impairment assessor under subsection (1).
- (5) If a medical panel refers back to the Commissioner under section 60(5)(b) a medical question in relation to the degree of impairment of a person, the Commissioner is to refer the question to another accredited impairment assessor under subsection (1).

46. Assessment of degree of impairment

- (1) The degree of impairment, of a person who has a compensable disease, that is attributable to the disease is to be, for the purpose of the determination under Part 6 of an application for compensation, assessed as at the time the application for compensation is made or at a later time, if any, that is approved.
- (2) The degree of impairment, of a person who has a compensable disease, that is attributable to the disease is, if the person has made an application under section 74 or 76, to be assessed –

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- (a) as at the time the application is made; or
 - (b) at a later time, if any, that is approved.
- (3) An assessment of a degree of impairment is to be undertaken by an accredited impairment assessor in accordance with –
- (a) any relevant guidelines issued by the WorkCover Tasmania Board under the *Workers Rehabilitation and Compensation Act 1988*; or
 - (b) if there are no such guidelines, the AMA Guides; or
 - (c) if there are no such guidelines and the AMA Guides are not applicable or are unsuitable, the method, if any, prescribed for the purposes of section 72 of the *Workers Rehabilitation and Compensation Act 1988*.
- (4) In assessing a degree of impairment, of a person who has a compensable disease, that is attributable to the disease –
- (a) regard is not to be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, the disease; and
 - (b) the degree may comprise a combination of impairments arising out of the same disease or various asbestos-related diseases, assessed together using the

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combination tables in the AMA Guides as modified, if at all, by the guidelines referred to in subsection (3); and

- (c) an impairment arising otherwise than from the disease is not to be taken into account in assessing the degree of the impairment resulting from the disease.

Division 2 – Reference of medical questions to medical panel

47. Medical questions to be referred to medical panel

- (1) The Commissioner must refer to a medical panel all the medical questions, specified in section 8, in relation to a person, to whom an application for compensation relates, who has a compensable disease, if –
 - (a) the application has not been determined by the Commissioner under section 70; and
 - (b) the Commissioner has not rejected, or does not intend to reject, the application under section 41(5)(b) or section 42.
- (2) Subsection (1) does not apply in relation to a medical question as to the degree of impairment or incapacity of a person to whom an application for compensation relates if a medical certificate from a medical specialist certifying that the person has an imminently fatal asbestos-related disease accompanies the application.

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- (3) The Commissioner may, at any time after an application for compensation in relation to a person who has a compensable disease has been determined by the Commissioner under section 70, refer to a medical panel a medical question, including but not limited to a medical question that has arisen in relation to –
- (a) whether the medical panel should make a determination that the person has an imminently fatal compensable disease or a non-imminently fatal compensable disease; or
 - (b) the degree of impairment or incapacity of the person; or
 - (c) an application under section 74, section 76 or 79; or
 - (d) whether expenses are payable under this Act in relation to the person.
- (4) The Commissioner must refer to a medical panel a medical question in relation to a person if the medical question is referred back to the Commissioner by a medical panel under section 60(4).
- (5) This section does not apply in relation to an application for compensation in relation to a person if the Commissioner is of the opinion that there are or may be reasons, other than because of a medical question, for determining under section 70 that the person is not entitled to compensation under this Act.

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48. Time for referring medical questions to medical panel

- (1) The Commissioner, within 5 business days after an application for compensation is made in relation to a person who has a compensable disease, is to refer to a medical panel under section 47(1) the medical questions in relation to the person.
- (2) If the Commissioner has, in accordance with section 44, referred to an accredited impairment assessor under section 45 a medical question as to the degree of impairment of a person –
 - (a) subsection (1) does not apply in relation to the medical questions in relation to the person; and
 - (b) the Commissioner is to refer to a medical panel under section 47(1) the medical questions in relation to the person within 5 business days after a determination of the medical question by the assessor is received by the Commissioner.
- (3) If the Commissioner has, in a notice under section 41(3), requested a person to provide further information that relates to a medical question –
 - (a) subsection (1) does not apply in relation to the medical questions in relation to the person; and

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- (b) the Commissioner is to refer to a medical panel under section 47(1) the medical questions in relation to the person within 5 business days after receiving the information requested.
- (4) Subsection (5) applies to a person if the Commissioner has –
 - (a) in accordance with section 44, referred to an accredited impairment assessor a medical question as to the degree of impairment of the person; and
 - (b) in a notice under section 41(3), requested the person to provide further information that relates to a medical question.
- (5) If this subsection applies to a person –
 - (a) subsections (1), (2) and (3) do not apply in relation to the medical questions in relation to the person; and
 - (b) the Commissioner is to refer to a medical panel under section 47(1) the medical questions in relation to the person within 5 business days after both the determination of an accredited impairment assessor and the further information are received by the Commissioner.
- (6) The Commissioner, under section 47(4), is to refer the medical question to a medical panel within 5 business days after receiving a notice

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under section 60(4) that a medical panel is referring the question back to the Commissioner.

49. Commissioner to provide opinions of assessors and other medical practitioners to medical panel

- (1) If the Commissioner refers a medical question in relation to a person to a medical panel, the Commissioner is to ensure that the referral is accompanied by any determination under section 45(3) in relation to the person or any notice, certificate, or other document, in relation to the person that the Commissioner has received from –
 - (a) an accredited impairment assessor; or
 - (b) a medical practitioner.
- (2) The Commissioner is to ensure that a medical panel to which a medical question is referred by the Commissioner is provided with any other information in the possession of the Commissioner that is likely to assist the medical panel to determine the medical question referred to the panel.

Division 3 – Formation of medical panel

50. Register of suitably qualified medical practitioners

- (1) The Commissioner must establish and maintain a register of medical practitioners who are suitably

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qualified and willing to be selected for a medical panel for the purposes of this Act.

- (2) A medical practitioner is suitably qualified if he or she is a specialist in a field of medicine in which asbestos-related diseases occur.

51. Selection of members of medical panel

- (1) If the Commissioner refers a medical question to a medical panel, the Commissioner must select 3 medical practitioners from the medical practitioner register to form the medical panel in relation to the medical question.
- (2) The medical practitioners selected to form a medical panel in relation to a medical question are to be medical practitioners –
 - (a) who are listed in the medical practitioner register; and
 - (b) so far as is reasonably practicable, who are specialists in the field of medicine in which occurs the asbestos-related disease to which the medical question relates.
- (3) If a medical question relates to more than one asbestos-related disease, the Commissioner is to ensure, so far as is reasonably practicable, that amongst the medical practitioners selected to form the medical panel there is, in relation to each of the fields of medicine in which occurs a disease to which the medical question relates, a

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medical practitioner who is a specialist in the field.

- (4) The Commissioner must not select a medical practitioner to be part of a medical panel in relation to a medical question in respect of a person if the medical practitioner –
- (a) has, in any capacity other than that of member of a medical panel –
 - (i) been involved in the examination or treatment of the person in relation to whether or not the person has an asbestos-related disease or the degree of impairment, or incapacity, of the person; or
 - (ii) provided medical services, including by giving a medical certificate, to the person in relation to whether or not the person has an asbestos-related disease or the degree of impairment, or incapacity, of the person; or
 - (b) informs the Commissioner that, for any reason, the medical practitioner's appointment to the medical panel could give rise to a conflict of interest.
- (5) A member of a medical panel is entitled to be paid the remuneration determined by the Minister.

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Division 4 – Referrals to medical practitioners

52. Medical panel may refer medical question to medical practitioner

- (1) A medical panel may refer to a medical practitioner a medical question referred to the medical panel by the Commissioner in relation to a person –
 - (a) who has a compensable disease; and
 - (b) to whom an application for compensation relates.
- (2) Subsection (1) applies whether or not an application for compensation in relation to the person has been determined under section 70.

53. Commissioner is to refer to medical practitioner person receiving weekly payments

If a person is receiving weekly payments under this Act, the Commissioner, once in each calendar year, is to refer the medical question of the degree of incapacity of the person to a medical practitioner.

54. Opinion of medical practitioner to whom medical question referred

- (1) A medical practitioner to whom a medical question is referred by a medical panel or the

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Commissioner may provide to the medical panel or the Commissioner, respectively, the practitioner's opinion in relation to the medical question.

- (2) If the Commissioner receives, from a medical practitioner to whom the Commissioner referred a medical question, the opinion of the practitioner in relation to the question, the Commissioner may refer the question to a medical panel under section 47(3).
- (3) A medical panel may, in making a determination under this Act, have regard to the opinion of a medical practitioner who is not a member of the panel.

Division 5 – Medical examinations by medical professionals

55. Person may be required to attend medical examination or take test

- (1) A medical professional to whom a medical question in relation to a person has been referred under this Act may, by notice to the person, require the person to undergo, at the time specified in the notice, an examination or test specified in the notice.
- (2) An examination or test of a person by a medical professional under this section is only to be conducted if the medical professional considers it is necessary to do so to determine the medical

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question that has been referred to the medical professional.

- (3) A notice under subsection (1) to a person is to specify that if the person refuses or fails, other than on reasonable grounds, to undergo an examination or test specified in the notice, the Commissioner must take in relation to the person the action referred to in section 57.

56. Medical professional may ask person questions, &c.

- (1) A medical professional to whom a medical question in relation to a person is referred under this Act may require the person –
- (a) to answer questions; or
 - (b) to produce relevant documents or information; or
 - (c) to consent to the production of relevant documents or information by another person.
- (2) A medical professional must advise a person on whom a requirement is imposed by the medical professional under subsection (1) that, if the person refuses, or fails, to comply with the requirement, the Commissioner must take in relation to the person the action referred to in section 57.

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57. Refusal by person to assist medical professional

- (1) Subsection (2) applies to a person if the person –
 - (a) unreasonably refuses, or fails, to attend for an examination or test at a place and time of which the person has at least 5 business days' notice under section 55(1); or
 - (b) refuses, or fails, to undergo an examination or test by a medical professional that the person has been required to undergo under section 55; or
 - (c) obstructs an examination or test that the person has been required to undergo by a medical professional under section 55; or
 - (d) unreasonably refuses, or fails, to answer questions asked by a medical professional under section 56; or
 - (e) unreasonably refuses, or fails, to produce relevant documents or information, or to consent to the production of relevant documents or information, when required to do so by a medical professional under section 56.
- (2) If this subsection applies to a person –
 - (a) the medical professional is to advise the Commissioner; and

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- (b) the Commissioner must refer to the Tribunal the matter of the person's refusal, failure or obstruction.
- (3) If subsection (2) applies to a person who has made an application under section 33(1), section 74, section 76 or 79 that has not been determined under section 70, section 75, section 77 or section 80, respectively, the Commissioner, despite any other provision of this Act, may refuse to deal with the application until –
 - (a) the Commissioner is advised by the Tribunal that the Tribunal has made a determination that it is satisfied of the relevant matters in relation to the person as referred to in section 58(3); or
 - (b) the Tribunal otherwise determines the matter.

58. Determination by Tribunal of matter referred to it under section 57

- (1) If a matter in relation to a person to whom section 57(2) applies is referred to the Tribunal under that provision, the Tribunal may do either or both of the following:
 - (a) suspend the right of the person to compensation under this Act;

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- (b) suspend the right of the person, or a member of a family of the person, to have expenses paid under Part 11 –

until the Tribunal makes a determination that it is satisfied of the relevant matters in relation to the person to whom section 57(2) applies or the Tribunal otherwise determines the matter.

- (2) The Tribunal may specify in a determination in relation to a matter referred to it –
 - (a) whether compensation suspended by it is to be paid to a person in respect of the period of suspension; and
 - (b) the period, of that suspension, in respect of which the person is entitled to be paid compensation.
- (3) The relevant matters in relation to a person to whom section 57(2) applies are that –
 - (a) the person –
 - (i) has attended an examination, or test, by a medical professional, at a place and time of which the person has at least 5 business days' notice; and
 - (ii) has not refused or failed to undergo, or obstructed, the examination or test; or

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- (b) the person has answered the questions, produced the documents or information or consented to the production of the documents or information referred to in section 57(1); or
 - (c) the Tribunal is satisfied that the refusal, failure, or obstruction, which constitutes the matter referred to the Tribunal under section 57(2)(b), was reasonable.
- (4) The Tribunal must notify the Commissioner if the Tribunal makes a determination that –
 - (a) the Tribunal is satisfied as to the relevant matters in relation to a person to whom section 57(2) applies; or
 - (b) the Tribunal has suspended under subsection (1)(a) or subsection (1)(b) a person's rights.
- (5) If the Commissioner is notified under subsection (4) that the Tribunal has suspended a person's rights under subsection (1)(a), the Commissioner –
 - (a) must not pay a lump sum payment to the person; and
 - (b) must cease to make weekly payments, if any, to the person –

until the Commissioner is notified by the Tribunal that the Tribunal has made a determination that it is satisfied of the relevant

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matters in relation to the person or the Tribunal otherwise determines the matter.

- (6) If the Commissioner is notified under subsection (4) that the Tribunal has suspended a person's rights under subsection (1)(b), the Commissioner must not pay any expenses to the person under Part 11 until the Commissioner is notified by the Tribunal that the Tribunal has made a determination that it is satisfied of the relevant matters in relation to the person or the Tribunal otherwise determines the matter.
- (7) If the Tribunal specifies in a determination in accordance with subsection (2) that compensation is to be paid to a person in respect of a period during which the person's rights to compensation were suspended, the Commissioner is to pay to the person the compensation, in respect of that period, to which the person would have, but for the suspension, been entitled.

59. Representation before medical professional

- (1) A person in respect of whom a medical professional is conducting an examination or test under this Act is not entitled to be represented by any person when the person attends the examination or test.
- (2) However, a medical professional may permit a person in respect of whom an examination or test is to be conducted under this Act to be

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represented by a person when the person attends the examination or test.

- (3) A person in respect of whom an examination or test is being conducted under this Act is entitled to be accompanied by a person of his or her choice when the person attends the examination or test.

Division 6 – Determination of medical questions

60. Determination by medical panel

- (1) A medical panel must make a decision in relation to a medical question referred to the panel.
- (2) If 2 or more members of a medical panel agree as to a decision in respect of a medical question, the decision is taken to be the decision of the medical panel.
- (3) A medical panel may decide a medical question by –
 - (a) making a determination in relation to the medical question; or
 - (b) deciding that its members are unable to agree as to the determination of the medical question.
- (4) If a medical panel decides that its members are unable to agree as to the determination of the

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medical question, the medical panel is to refer the question back to the Commissioner.

- (5) A medical panel must notify the Commissioner in writing of the panel's decision –
 - (a) to make a determination in relation to a medical question; or
 - (b) that the medical panel is unable to agree as to the determination of the medical question and is referring the matter back to the Commissioner.
- (6) A notice under subsection (5) that the medical panel has made a determination in relation to a medical question is to specify the evidence and any reasoning used in determining the question.
- (7) A notice under subsection (5) that the medical panel is unable to agree as to the determination of a medical question is to include the reasons why the panel is unable to so agree.
- (8) A notice of a medical panel's decision is to be given to the Commissioner within 3 business days after the decision is made.

61. Determinations by medical panel if matter referred to accredited impairment assessors

- (1) Subject to subsection (3), if the medical panel receives from the Commissioner a notice of a determination under section 45(3) from an accredited impairment assessor in relation to a

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medical question, the determination is taken to be a determination of the medical panel under section 60 in relation to the medical question.

- (2) A medical panel, within 15 business days after receiving from the Commissioner a notice of a determination under section 45(3) from an accredited impairment assessor in relation to a medical question, may request the Commissioner to refer the medical question under section 45 to another accredited impairment assessor.
- (3) If the medical panel requests the Commissioner under subsection (2) to refer a medical question to another accredited impairment assessor, subsection (1) only applies in relation to the decision of the accredited impairment assessor to whom the medical question is referred in accordance with that request.

62. Determination by medical panel of whether person has imminently or non-imminently fatal disease

- (1) A medical panel to which the medical questions in relation to an application for compensation by a person are referred by the Commissioner under section 47(1) is, if it is satisfied that the person has a compensable disease, to make a determination under section 60 as to whether –
 - (a) the person has an imminently fatal asbestos-related disease; or

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-
- (b) the person has a non-imminently fatal asbestos-related disease.
- (2) A medical panel to which a medical question in relation to a person is, after an application for compensation by the person is determined by the Commissioner under section 70, referred by the Commissioner under this Act, may make a determination under section 60 as to whether –
- (a) the person has an imminently fatal asbestos-related disease; or
- (b) the person has a non-imminently fatal asbestos-related disease.
- (3) For the purposes of subsections (1) and (2), the medical panel is to determine –
- (a) that the person has an imminently fatal asbestos-related disease if it is satisfied that –
- (i) the person has an asbestos-related disease; and
- (ii) the person is reasonably likely to die within 2 years from the date on which the medical panel makes its determination; and
- (iii) an asbestos-related disease is reasonably likely to be a significant factor contributing to the person's death; or

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- (b) that the person has a non-imminently fatal asbestos-related disease if it is satisfied that –
 - (i) the person has an asbestos-related disease; and
 - (ii) the person is not reasonably likely to die within 2 years from the date on which the certificate is given, or, if the person is reasonably likely to die within 2 years from the date on which the medical panel makes its determination, that an asbestos-related disease is not reasonably likely to be a significant factor contributing to the person's death.

63. Time in which medical panel to make determination

- (1) A medical panel is to make, in relation to a medical question referred to it under this Act, a decision under section 60(1) as soon as practicable and, in any event, within 15 business days after the medical question is referred to it.
- (2) Subsection (3) applies to a medical question referred to a medical panel under this Act if the medical panel –

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- (a) refers the person to a medical practitioner under section 52 for an examination or test in relation to the medical question; or
 - (b) requires the person to undergo an examination or test under section 55 in relation to the medical question.
- (3) If this subsection applies to a medical question referred to a medical panel under this Act –
 - (a) subsection (1) does not apply in relation to the medical question; and
 - (b) the medical panel is to make a decision under section 60(1) in relation to the medical question within 15 business days after it –
 - (i) receives a determination of the medical question from a medical practitioner to whom the question has been referred under section 52; or
 - (ii) has completed the examination, or received the results of the test –

as the case may be.
- (4) If a medical panel requests the Commissioner under section 61(2) to refer a medical question to another accredited impairment assessor –

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- (a) subsection (1) does not apply in relation to the medical question; and
- (b) the medical panel is to make a decision under section 60(1) in relation to the medical question as soon as practicable, and in any case within 15 business days, after receiving from the Commissioner a copy of the decision by the other assessor in relation to the medical question.

64. Medical panel to determine own procedure

Subject to regulations, if any, under this Act in relation to the practice and procedures of a medical panel, a medical panel may determine its own practice and procedures.

65. Medical panels not bound by rules of evidence

A medical panel, or a member of a medical panel, is not bound by the rules of evidence but may inform itself or himself or herself, on any matter relating to a medical question referred to the medical panel, in the manner the panel or member of the panel thinks fit.

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***Division 7 – Commissioner to pay costs of certain
examinations and tests***

**66. Commissioner to pay for costs of tests or
examinations by accredited impairment assessors**

- (1) If this section applies to a person, the Commissioner is liable for the costs of an examination or test of the person, once in each calendar year, by an accredited impairment assessor to determine the degree of impairment of the person.
- (2) This section applies to a person if an application for compensation by the person has, in accordance with section 44(5), not been referred to a medical panel because the Commissioner has not received a determination under section 45(3) of an accredited impairment assessor to the effect that the person has a degree of impairment of 10% or more.
- (3) This section applies to a person if –
 - (a) the person is a person who has a compensable disease; and
 - (b) a determination has been made under section 70 that the person has a non-imminently fatal asbestos-related disease; and
 - (c) the Commissioner has not made a determination under this Act that the

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person has an imminently fatal asbestos-related disease; and

(d) the Commissioner has not made a determination under this Act that the person has a degree of impairment of 51% or more.

(4) This section applies to a person if a medical question as to the degree of impairment of the person has been referred by the Commissioner to an accredited impairment assessor under section 45(1).

67. Commissioner to pay for costs of certain medical examinations and tests

(1) The Commissioner is liable for the costs of –

(a) an examination or test carried out on a person by a medical practitioner to whom a medical question in relation to the person is referred by the Commissioner under this Act; and

(b) any analysis required in relation to that examination or test.

(2) If the Commissioner has determined under section 70 that a person who has a compensable disease is entitled to compensation under this Act, the Commissioner is liable for the costs of –

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- (a) one examination or test carried out on a person by a medical specialist in a calendar year; and
 - (b) any analysis required in relation to that examination or test.
- (3) The Commissioner is liable for the costs of –
- (a) an examination or test that a person is required by a notice under section 55(1) to undergo; and
 - (b) any analysis required in relation to that examination or test.

68. Applications for payment of costs

- (1) If the Commissioner is liable under this Division for the costs of an examination or test of a person by a medical practitioner or accredited impairment assessor, or any analysis conducted by a person in relation to that examination or test, the person may apply to the Commissioner for the payment of those costs.
- (2) If an application is made by a person under subsection (1) in relation to the costs of any examination, test or analysis for which the Commissioner is liable under this Division, the Commissioner must –
 - (a) if the person has paid the costs of the medical practitioner, accredited impairment assessor or person who

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conducted the examination, test or analysis, reimburse the person the amount of those costs; or

- (b) in any other case, pay those costs to the medical practitioner, accredited impairment assessor or person who conducted the examination, test or analysis.

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**PART 6 – DETERMINATION OF APPLICATIONS FOR
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**69. Application for compensation to be determined
after determination of medical panel**

- (1) The Commissioner is to determine under section 70(1) an application for compensation after receiving from a medical panel a determination of the medical questions referred to the medical panel under section 47 in relation to the application for compensation.
- (2) The Commissioner is to determine under section 70(1) an application for compensation as soon as practicable, but in any case not more than 5 business days, after receiving from a medical panel the determination of the medical questions in relation to the application for compensation.
- (3) Subsections (1) and (2) do not apply in relation to an application for compensation if the Commissioner has, in accordance with section 47(5), not referred to a medical panel the medical questions in relation to the application.

**70. Commissioner to determine applications for
compensation**

- (1) The Commissioner must determine an application for compensation by a person who has a compensable disease by –

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- (a) determining that the person is entitled to compensation under this Act; or
 - (b) determining that the person is not entitled to compensation under this Act.
- (2) If the Commissioner determines under subsection (1)(a) that a person who has a compensable disease is entitled to compensation under this Act, the determination must include a determination as to whether the person has –
 - (a) an imminently fatal asbestos-related disease; or
 - (b) a non-imminently fatal asbestos-related disease.
- (3) If the Commissioner determines under subsection (1)(a) that a person who has a compensable disease is entitled to compensation under this Act, the determination must include –
 - (a) a determination as to the amount of compensation by way of lump sum to which the person is entitled in accordance with section 72 or 73; and
 - (b) a determination in accordance with Division 3 of Part 7 as to whether the person is entitled to weekly payments and the amount of any such payments.
- (4) The Commissioner must determine an application for compensation by a member, or

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members, of a family of a person who has a compensable disease by –

- (a) determining that a member, or members, of the family are entitled to compensation under this Act; or
 - (b) determining that no members of the family are entitled to compensation under this Act.
- (5) If the Commissioner determines under subsection (4)(a) that a member, or members, of the family of a person who has a compensable disease are entitled to compensation under this Act, the determination is to include a determination as to –
- (a) the amount of compensation by way of lump sum to which the member, or members, of the family are entitled in accordance with this Act; and
 - (b) the proportions in which the amount is to be divided, if at all, between those members of the family.
- (6) As soon as practicable after making a determination under subsection (1) or (4) in relation to an application for compensation, the Commissioner must give, to the person who made the application, notice of the making of the determination.
- (7) A notice, given to a person by the Commissioner under subsection (6), of a determination by the

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Commissioner that determines that any person who made the application is not entitled to compensation under this Act must set out the grounds on which the determination was made that the person is not entitled to compensation.

71. Commissioner bound by medical panel's determination of medical questions

- (1) If a medical panel has determined a medical question in relation to a person who has a compensable disease, the Commissioner is to treat the determination of the medical question as conclusive evidence of the medical question.
- (2) Without limiting the generality of subsection (1), if a medical panel has determined that –
 - (a) a person has an imminently-fatal asbestos-related disease; or
 - (b) a person has a non-imminently-fatal asbestos-related disease –

the Commissioner, in determining under section 70 an application for compensation relating to the person, must include in that determination, in accordance with section 70(2), a corresponding determination.

- (3) Despite subsections (1) and (2), if a medical panel –

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(a) makes a determination that a person has a non-imminently fatal asbestos-related disease; and

(b) then makes a subsequent determination that the person has an imminently fatal asbestos-related disease –

subsections (1) and (2) only apply in relation to the subsequent determination.

(4) Despite subsections (1) and (2), if a medical panel –

(a) makes a determination in relation to a medical question in respect of a person; and

(b) then makes a subsequent determination in relation to the medical question in respect of the person –

subsections (1) and (2) only apply in relation to the subsequent determination.

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**PART 7 – COMPENSATION PAYABLE TO PERSON
WHO HAS COMPENSABLE DISEASE**

*Division 1 – Compensation payable to person who has
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**72. Compensation payable to person who has
imminently fatal compensable disease**

- (1) Subject to this Act, the compensation payable under this Act to a person –
- (a) who has a compensable disease that was, before the commencement day, correctly diagnosed by a medical specialist to be an asbestos-related disease; and
 - (b) who was notified of that diagnosis by the medical specialist; and
 - (c) in relation to whom the Commissioner or the Tribunal has made a determination under this Act that the person has an imminently fatal asbestos-related disease –

is a lump sum equivalent to the relevant amount in relation to the person.

- (2) For the purposes of subsection (1), the relevant amount in relation to a person is the total of –
- (a) 360 compensation units; and

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- (b) the number of compensation units, determined in accordance with regulations prescribed for the purposes of this subsection, for a person of the age of the person on the commencement day.
- (3) Subject to this Act, the compensation payable under this Act to a person –
- (a) to whom subsection (1) does not apply; and
 - (b) who has a compensable disease that was, after the commencement day, correctly diagnosed by a medical specialist to be an asbestos-related disease; and
 - (c) who was notified of that diagnosis by the medical specialist; and
 - (d) in relation to whom the Commissioner or the Tribunal has made a subsequent determination under this Act that the person has an imminently fatal asbestos-related disease –

is a lump sum equivalent to the relevant amount in relation to the person.

- (4) For the purposes of subsection (3), the relevant amount in relation to a person is the total of –
- (a) 360 compensation units; and
 - (b) the number of compensation units, determined in accordance with

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regulations prescribed for the purposes of this subsection, for a person of the age of the person on the day on which the person is first notified, by a medical specialist who has correctly diagnosed that the person has an imminently fatal asbestos-related disease, that the person has the disease.

(5) If –

- (a) a person who has a compensable disease is notified that the person has an imminently fatal asbestos-related disease by a medical specialist who has correctly diagnosed that the person has an imminently fatal asbestos-related disease; and
- (b) the person is subsequently notified by that medical specialist or another medical specialist, that the person has an imminently fatal asbestos-related disease –

the reference in subsection (4) to the day on which the person is notified that the person has an imminently fatal asbestos-related disease is to be taken to be a reference to the first day on which the person is notified as referred to in paragraph (a).

- (6) Despite any other provision of this section, if the Commissioner has paid compensation by way of a lump sum under this Act to a person –

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- (a) who has a compensable disease; and
- (b) in relation to whom the Commissioner or the Tribunal made, before making a determination under this Act that the person has an imminently fatal asbestos-related disease, a determination under this Act that the person has a non-imminently fatal asbestos-related disease –

the amount of compensation payable to the person by way of lump sum under this section is to be reduced by the amount of any lump sum already paid to the person under this Act.

73. Compensation payable to person who has non-imminently fatal compensable disease

- (1) Subject to this Act, the compensation payable under this Act to a person –
 - (a) who has a compensable disease; and
 - (b) who has a degree of impairment of 10% or more because of an asbestos-related disease; and
 - (c) in relation to whom the Commissioner or the Tribunal has made a determination under this Act that the person has a non-imminently fatal asbestos-related disease; and

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- (d) in relation to whom the Commissioner or the Tribunal has not made a subsequent determination under this Act that the person has an imminently fatal asbestos-related disease –

is a lump sum equivalent to the relevant amount in relation to the person.

- (2) For the purposes of subsection (1), the relevant amount in relation to a person is 360 compensation units, less –
 - (a) if the person has a degree of impairment, because of one or more asbestos-related diseases, of less than 26%, 240 compensation units; and
 - (b) if the person has a degree of impairment, because of one or more asbestos-related diseases, of 26% or more but less than 51% , 120 compensation units –

together with weekly payments, if any, to which the person is entitled under Division 3.

- (3) Despite any other provision of this section, if the Commissioner has paid compensation by way of a lump sum under this Act to a person –
 - (a) who has a compensable disease; and
 - (b) in relation to whom the Commissioner or the Tribunal made, before making a determination under this Act that the person has a non-imminently fatal

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asbestos-related disease, a determination under this Act that the person has an imminently fatal asbestos-related disease –

the amount of compensation payable to the person by way of lump sum under this section is to be reduced by the amount of any lump sum already paid to the person under this Act.

Division 2 – Variation of compensation payable

74. Person with increased impairment of less than 51% may apply for variation of lump sum compensation

- (1) Subsection (2) applies to a person if –
 - (a) the Commissioner has made a determination under section 70 that the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has not made a subsequent determination under section 70 that the person has an imminently fatal asbestos-related disease; and
 - (c) the person has a degree of impairment, because of one or more asbestos-related diseases, of 26% or more but less than 51%; and
 - (d) the person has not received a lump sum equivalent to more than 120

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compensation units in accordance with
section 73(2).

- (2) If this subsection applies to a person, the person may, by lodging with the Commissioner an application in the approved form, apply to the Commissioner for an additional amount to be paid to the person by way of lump sum under section 75 by virtue of the fact that the degree of impairment of the person because of one or more asbestos-related diseases is 26% or more but less than 51%.
- (3) Subsection (2) applies to a person in relation to an asbestos-related disease, whether or not it is the same disease as the disease in relation to which a determination was made under section 70 that compensation was payable to the person.
- (4) An application under subsection (2) by a person is to be accompanied by –
 - (a) a determination made under section 45(3) by an accredited impairment assessor; or
 - (b) a certificate of an accredited impairment assessor –

to the effect that the person has a degree of impairment, because of one or more asbestos-related diseases, of 26% or more but less than 51%.

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75. Variation of lump sum compensation because of increased impairment of less than 51%

- (1) The Commissioner must determine an application made under section 74 –
 - (a) by granting the application; or
 - (b) by refusing to grant the application.
- (2) The Commissioner, after receiving an application made by a person under section 74, may refer to an accredited impairment assessor under section 45 the medical question as to the degree of impairment of the person.
- (3) If it appears to the Commissioner that –
 - (a) the degree of impairment of a person who made an application under section 74 is, because of one or more asbestos-related diseases, 26% or more but less than 51%; and
 - (b) part or all of the degree of impairment of the person is because of a disease (“**the secondary disease**”) that is not the same disease as the disease in relation to which a determination was made under section 70 that compensation was payable to the person –

the Commissioner must, before determining under subsection (1) the application, refer to a medical panel under section 47(3) the question

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as to whether the secondary disease is an asbestos-related disease.

(4) The Commissioner must determine in accordance with subsection (1)(a) an application made by a person under section 74 if the person has not received a lump sum equivalent to more than 120 compensation units in accordance with section 73(2) and the Commissioner –

(a) is satisfied, having regard to –

(i) a determination made under section 45(3) by an accredited impairment assessor; or

(ii) a medical certificate of an accredited impairment assessor –

that the degree of impairment of the person, because of one or more asbestos-related diseases, is 26% or more but less than 51%; or

(b) where subsection (3) applies, receives from a medical panel a determination to the effect that the degree of impairment, because of one or more asbestos-related diseases, of the person is 26% or more but less than 51%.

(5) Subsection (4) applies to a person in relation to an asbestos-related disease whether or not it is the same disease as the disease in relation to which a determination was made under

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section 70 that compensation was payable to the person.

- (6) The Commissioner must notify in writing a person in relation to whom a determination is made under subsection (1) of the determination of the Commissioner.
- (7) If the Commissioner determines in accordance with subsection (1)(a) an application made under section 74 by a person, the Commissioner must determine that the person is to be paid an additional amount of compensation by way of a lump sum of an amount equivalent to 120 compensation units.

76. Person with increased impairment of 51% or more may apply for variation of lump sum compensation

- (1) Subsection (2) applies to a person if –
 - (a) the Commissioner has made a determination under section 70 that the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has not made a subsequent determination under section 70 that the person has an imminently fatal asbestos-related disease; and

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- (c) the person has a degree of impairment, because of one or more asbestos-related diseases, of 51% or more; and
 - (d) the person has not received, in accordance with section 73(2), a lump sum equivalent to more than 240 compensation units.
- (2) If this subsection applies to a person, the person may, by lodging with the Commissioner an application in the approved form, apply to the Commissioner for an additional amount of compensation to be paid to the person by way of lump sum under section 77 by virtue of the fact that the degree of impairment of the person because of one or more asbestos-related diseases is 51% or more.
- (3) Subsection (2) applies to a person in relation to an asbestos-related disease, whether or not it is the same disease as the disease in relation to which a determination was made under section 70 that compensation was payable to the person.
- (4) An application under subsection (2) by a person is to be accompanied by –
- (a) a determination made under section 45(3) by an accredited impairment assessor; or
 - (b) a medical certificate given by an accredited impairment assessor –

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to the effect that the person has a degree of impairment, because of one or more asbestos-related diseases, of 51% or more.

77. Variation of lump sum compensation because of increased impairment of 51% or more

- (1) The Commissioner must determine an application made under section 76 –
 - (a) by granting the application; or
 - (b) by refusing to grant the application.
- (2) The Commissioner, after an application is made under section 76 by a person, may refer to an accredited impairment assessor under section 45 the medical question as to the degree of impairment of the person.
- (3) If it appears to the Commissioner that –
 - (a) the degree of impairment of a person who has made an application under section 76 is, because of one or more asbestos-related diseases, 51% or more; and
 - (b) part or all of the degree of impairment of the person is because of a disease (“**the secondary disease**”) that is not the same disease as the disease in relation to which a determination was made under section 70 that compensation was payable to the person –

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the Commissioner must, before determining under subsection (1) the application, refer to a medical panel under section 47(3) the question as to whether the secondary disease is an asbestos-related disease.

(4) The Commissioner must determine in accordance with subsection (1)(a) an application made by a person under section 76 if the person has not received a lump sum equivalent to more than 240 compensation units in accordance with section 73(2) and the Commissioner –

(a) is satisfied, having regard to –

(i) a determination made under section 45(3) by an accredited impairment assessor; or

(ii) a medical certificate given by an accredited impairment assessor –

that the degree of impairment, because of one or more asbestos-related diseases, of the person is 51% or more; and

(b) where subsection (3) applies, receives from a medical panel a determination to the effect that the degree of impairment, because of one or more asbestos-related diseases, of the person is 51% or more.

(5) Subsection (4) applies to a person in relation to an asbestos-related disease whether or not it is the same disease as the disease in relation to which a determination was made under

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section 70 that compensation was payable to the person.

- (6) The Commissioner must notify in writing a person in relation to whom a determination is made under subsection (1) of the determination of the Commissioner.
- (7) If –
 - (a) the Commissioner determines in accordance with subsection (1)(a) an application made under section 76 by a person; and
 - (b) the person has received an additional amount of compensation by way of lump sum of an amount equivalent to 120 compensation units in accordance with section 75(7) –

the Commissioner must determine that the person is to be paid an additional amount of compensation by way of a lump sum of an amount equivalent to 120 compensation units.

- (8) If –
 - (a) the Commissioner determines in accordance with subsection (1)(a) an application made under section 76 by a person; and
 - (b) the person has not received an additional amount of compensation by way of a lump sum of an amount equivalent to

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120 compensation units in accordance
with section 75(7) –

the Commissioner must determine that the
person is to be paid an additional amount of
compensation by way of a lump sum of an
amount equivalent to 240 compensation units.

**78. Time in which application under section 74 or
section 76 is to be determined**

- (1) The Commissioner, under section 75(1) or section 77(1), is to determine an application made by a person under section 74 or section 76, respectively, within 10 business days after receiving the application.
- (2) If the Commissioner, after receiving an application under section 74 or section 76, refers to an accredited impairment assessor, in accordance with section 75(2) or section 77(2), the medical question as to the degree of impairment of the person to whom the application relates –
 - (a) subsection (1) does not apply in relation to the application; and
 - (b) the Commissioner, under section 75(1) or section 77(1), as the case may be, is to determine the application within 10 business days after receiving a determination of the medical question from the assessor.

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- (3) If the Commissioner, after receiving from a person an application under section 74 or section 76, has, under section 75(3) or section 77(3), referred to a medical panel a medical question in relation to the person –
 - (a) subsection (1) does not apply in relation to the application; and
 - (b) the Commissioner, under section 75(1) or section 77(1), as the case may be, is to determine the application within 10 business days after receiving a determination of the medical question from the medical panel.
- (4) Subsection (5) applies in relation to an application under section 74 or section 76 by a person if the Commissioner has –
 - (a) in accordance with section 75(2) or section 77(2), referred to an accredited impairment assessor a medical question in relation to the person or, in accordance with section 75(3) or section 77(3), referred a medical question in relation to the person to a medical panel; and
 - (b) in a notice under section 82(2), requested the person to provide further information that relates to a medical question.
- (5) If this subsection applies in relation to an application under section 74 or section 76 by a person –

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- (a) subsections (1), (2) and (3) do not apply in relation to the application; and
- (b) the Commissioner, under section 75(1) or section 77(1), as the case may be, is to determine the application within 10 business days after the Commissioner receives both –
 - (i) the determination of the accredited impairment assessor or the medical panel, as the case may be; and
 - (ii) the further information requested.

79. Person with increased incapacity may apply for variation of weekly payments

- (1) Subsection (2) applies to a person if –
 - (a) the Commissioner has made a determination under section 70 that the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has not made a subsequent determination under section 70 that the person has an imminently fatal asbestos-related disease.
- (2) If this subsection applies to a person, the person may apply to the Commissioner for weekly payments, or an increase in the amount of weekly payments, to be paid to the person under

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this Act by lodging with the Commissioner an application in the approved form.

- (3) Subsection (2) applies to a person in relation to an asbestos-related disease whether or not it is the same disease as the disease in relation to which a determination was made under section 70 that compensation was payable to the person.
- (4) An application under subsection (2) by a person is to be accompanied by a medical certificate from a medical practitioner as to the degree of incapacity of the person.

80. Variation of weekly payments because of increased incapacity

- (1) The Commissioner must determine an application made under section 79 –
 - (a) by granting the application; or
 - (b) by refusing to grant the application.
- (2) The Commissioner, after receiving an application under section 79 from a person –
 - (a) may refer to a medical practitioner the medical question as to the degree of incapacity of the person; and
 - (b) may refer to a medical panel the medical question as to the degree of incapacity of the person.

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- (3) If the Commissioner is of the opinion that the degree of incapacity of a person to whom an application under section 79 relates has increased because of a different disease (“**the secondary disease**”) from the disease in relation to which a determination was made in relation to the person under section 70, the Commissioner must refer to a medical panel the medical question as to whether the secondary disease is an asbestos-related disease.
- (4) If the Commissioner is satisfied, having regard to –
 - (a) a medical certificate given by a medical practitioner; or
 - (b) a determination of a medical panel –that the degree of incapacity of a person to whom an application under section 79 relates has increased because of an asbestos-related disease, the Commissioner must determine the application in accordance with subsection (1)(a).
- (5) Subsection (4) applies to a person in relation to an asbestos-related disease whether or not it is the same disease as the disease in relation to which the determination that compensation was payable to the person was made under section 70.
- (6) The Commissioner must notify in writing a person in relation to whom a determination is made under subsection (1) of the determination of the Commissioner.

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- (7) If the Commissioner determines in accordance with subsection (1)(a) an application made under section 79 by a person, the Commissioner must determine that the weekly payments of the person are to be increased to reflect the degree of incapacity that the person has at the time of the application.

81. Time in which application under section 79 is to be determined

- (1) The Commissioner, under section 80(1), is to determine an application by a person under section 79 within 10 business days after receiving the application.
- (2) If the Commissioner, after receiving from a person an application under section 79, refers a medical question in relation to the person to a medical practitioner in accordance with section 80(2) –
- (a) subsection (1) does not apply in relation to the application; and
 - (b) the Commissioner, within 10 business days after receiving a determination of the medical question from the medical practitioner, is to –
 - (i) determine under section 80(1) the application; or

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- (ii) refer the medical question to a medical panel.

- (3) If the Commissioner, after receiving from a person an application under section 79, refers a medical question in relation to the person to a medical panel in accordance with section 80(2) or (3) or subsection (2)(b)(ii) –
 - (a) subsection (1) does not apply in relation to the application; and
 - (b) the Commissioner is to determine under section 80(1) the application within 10 business days after receiving a determination of the medical question from the medical panel.

- (4) Subsection (5) applies in relation to an application under section 79 by a person if the Commissioner has –
 - (a) referred a medical question in relation to the person to a medical practitioner or medical panel in accordance with section 80(2) or (3) or subsection (2)(b)(ii); and
 - (b) in a notice under section 82(2), requested the person to provide further information that relates to a medical question.

- (5) If this subsection applies in relation to an application under section 79 by a person –

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- (a) subsections (1), (2) and (3) do not apply in relation to the application; and
 - (b) the Commissioner is to determine under section 80(1) the application within 10 business days after the Commissioner receiving both –
 - (i) the determination of the medical practitioner or medical panel, as the case may be; and
 - (ii) the further information requested.

82. Commissioner may request further information be provided

- (1) This section applies in relation to an application made under section 74, section 76 or 79 if the Commissioner is not satisfied that there is sufficient information available to the Commissioner to enable the Commissioner to determine the application under section 75, section 77 or section 80, respectively.
- (2) The Commissioner may, by notice to a person who has made an application to which this section applies –
 - (a) request the person to provide to the Commissioner the further information specified in the notice; and

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- (b) specify in the notice a date by which the information must be provided to the Commissioner; and
- (c) notify the person that –
 - (i) the Commissioner may refuse to consider the application until the further information is provided to the Commissioner; and
 - (ii) if the further information is not provided to the Commissioner by the date specified in the notice in accordance with paragraph (b), the Commissioner may reject the application.
- (3) A date specified in a notice for the purposes of subsection (2)(b) is not to be earlier than 40 business days after the notice is issued.
- (4) If the Commissioner has issued a notice under subsection (2) to a person requiring the person to provide further information to the Commissioner in relation to an application to which this section applies –
 - (a) the Commissioner may refuse to consider the application until the further information is provided to the Commissioner; or
 - (b) the Commissioner may reject the application if the information is not provided by the person by the date

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specified in the notice in accordance with subsection (2)(b).

- (5) The rejection by the Commissioner of an application made by a person under section 74, section 76 or 79 does not prevent a further application being made under that section by the person.

Division 3 – Calculation of weekly payments

83. Interpretation of Division 3

In this Division –

“normal weekly earnings”, in relation to a person who is incapacitated for work, means the average weekly earnings of the person during the relevant period;

“period of incapacity”, in relation to a person, means –

- (a) a period of incapacity for work, whether partial incapacity, total incapacity or a combination of partial incapacity and total incapacity; and
- (b) in the case of separate periods of incapacity for work resulting from one or more asbestos-related diseases, the aggregate of those periods;

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“relevant period”, in relation to a person,
means –

- (a) if the person has been continuously employed by the same employer as a worker for 12 months or more before making an application for compensation, the 12 months immediately before the person made the application; or
- (b) if the person has been continuously employed by the same employer as a worker for less than 12 months before making an application for compensation, the period for which he or she was employed immediately before the person made the application; or
- (c) if section 84(3)(b) applies to the person, the aggregate of the period of 6 months referred to in that provision.

84. Entitlement to weekly payments

- (1) Subject to this Act, a person who has a compensable disease is entitled to be paid weekly payments under this Division for a period of incapacity if the Commissioner determines that the person is so entitled.

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- (2) The Commissioner may determine that a person is entitled to be paid weekly payments under this Division for a period of incapacity if –
- (a) the Commissioner has determined under section 70 an application for compensation by the person by determining that –
 - (i) the person is entitled to compensation; and
 - (ii) the person has a non-imminently fatal asbestos-related disease; and
 - (b) the Commissioner has not determined under section 70 an application for compensation by the person by determining that –
 - (i) the person is entitled to compensation; and
 - (ii) the person has an imminently fatal asbestos-related disease; and
 - (c) the Commissioner is satisfied, having regard to a medical certificate received from a medical practitioner, that the person is, for that period of incapacity, partially or totally incapacitated for work as a result of an asbestos-related disease; and
 - (d) the person is an eligible person in respect of the application for compensation.

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- (3) For the purposes of subsection (2)(d), a person is an eligible person in respect of an application for compensation if, on the date on which the person makes the application –
- (a) the person was employed as a worker for at least 2 months immediately before the person made the application; or
 - (b) the person –
 - (i) had, for a total of 6 months (whether or not the 6 months consist of consecutive periods) in the 12-month period before the application for compensation is made, been employed as a worker; and
 - (ii) would have been employed as a worker on the date on which the person made the application for compensation, but for the effects of one or more asbestos-related diseases.
- (4) A person is not to be taken to be a worker for the purposes of subsection (3) if he or she is, under this Act, a worker for the purposes of that subsection by reason only of being a volunteer.

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85. Amount of weekly payments

- (1) The weekly payments to which a person is entitled to be paid in accordance with section 84(1) are, if the person is totally incapacitated for work, weekly payments equal to whichever of the following is the greater:
 - (a) the normal weekly earnings of the person;
 - (b) the ordinary time rate of pay of the person for the work in which, and for the hours during which, the person was engaged during the relevant period.
- (2) The weekly payments to which a person is entitled in accordance with section 84(1) are, if the person is partially incapacitated for work, weekly payments for the period of incapacity equal to the difference between –
 - (a) the amount of weekly payment to which the person would have been entitled under subsection (1) if he or she had been totally incapacitated; and
 - (b) the amount that the person is earning, or would be able to earn in suitable employment or business, during the period of incapacity.
- (3) If, during the period of incapacity of the person, the ordinary hourly rate of pay –

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- (a) for the work in which the person was engaged immediately before the commencement of that period; and
- (b) for the hours during which the person was engaged immediately before the commencement of that period –

increases or decreases in accordance with the person's entitlement under the person's contract of employment or industrial instrument, the weekly payment to which the person is entitled is to be increased or decreased by the same amount.

86. Matters to be taken into account in calculating weekly payments

- (1) In fixing in accordance with section 85 the amount of the weekly payment to a person under section 84, regard is to be had to any relevant payment, allowance, or benefit, to the person.
- (2) For the purposes of subsection (1), a relevant payment, allowance, or benefit, to a person –
 - (a) includes a payment, allowance, or benefit, that the person would, if he or she remained employed after he or she made his or her application for compensation, receive in respect of his or her employment during the period of incapacity; and

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- (b) does not include a payment, allowance, or benefit, paid in respect of a period of long service leave or of any entitlement to long service leave or in lieu of the taking of a period of long service leave.
- (3) This subsection applies to a person if the person –
 - (a) has so far recovered from an asbestos-related disease as to be fit for employment, but only for employment of a more limited kind than the employment in which he or she was engaged during the relevant period; and
 - (b) satisfies the Commissioner –
 - (i) that the person has taken all reasonable steps to obtain, and has failed to obtain, employment of the more limited kind referred to in paragraph (a); and
 - (ii) that the person’s failure to obtain that employment is a consequence wholly or mainly of his or her having an asbestos-related disease.
- (4) If subsection (3) applies to a person, the Commissioner may determine that the person’s incapacity is to continue to be treated as total incapacity for the period, and subject to the conditions, that the Commissioner thinks fit.

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- (5) If a determination is made under subsection (4), weekly payments are payable to the person in accordance with this Division on the making of the determination.
- (6) Subsections (4) and (5) apply to a person despite –
 - (a) any other provision of this Act; or
 - (b) any earlier determination of the Commissioner or the Tribunal under this Act in relation to the person.
- (7) In determining the amount of weekly payments payable under section 84 or this section, no regard is to be had to any sum paid or payable –
 - (a) under any contract of assurance or insurance, including a contract made with a friendly society or other benefit society or association or a trade union; or
 - (b) out of any relief, superannuation, or sustentation fund, or other fund (whether statutory or otherwise) of a kind similar to a contract referred to in paragraph (a).

87. Calculation of normal weekly earnings

- (1) In this section –

“excess hours”, in relation to a person, means hours worked in addition to the minimum guaranteed contracted hours –

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- (a) prescribed in an award, industrial agreement or enterprise agreement which applied to the person during the relevant period; or
 - (b) under the person's contract of employment during the relevant period.
- (2) For the purposes of this Division, a reference to the normal weekly earnings of a person is to be construed as a reference to the normal weekly earnings of the person as determined in accordance with this section.
- (3) In calculating normal weekly earnings, regard is to be had to the principle that, subject to this Act, a person should receive no more than the person would have received if the person had continued in the person's usual employment during the period of incapacity.
- (4) In calculating normal weekly earnings, any component of the person's earnings attributed to overtime or excess hours is to be disregarded unless –
 - (a) the overtime or excess hours was or were a requirement of the person's contract of employment; and
 - (b) the person worked overtime or excess hours in accordance with a roster; and

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- (c) the pattern was substantially uniform as to the number of overtime or excess hours worked; and
 - (d) the person would have continued to work overtime or excess hours in accordance with the established pattern if the person had not been incapacitated or had continued to be employed after making his or her application for compensation.
- (5) In calculating normal weekly earnings, any amount paid to the person at the discretion of the person's employer by way of bonus, gratuity or other similar payment is to be excluded.
- (6) If, during a relevant period, the person has contracts of service with 2 or more employers, his or her normal weekly earnings are to be calculated as the sum of the average weekly earnings in each employment, as if his or her earnings under both or all of those contracts were earnings in the employment of the employer for whom he or she was working during the relevant period.
- (7) If one of the contracts referred to in subsection (6) is a full-time contract of service, the normal weekly earnings of the person are to be calculated by reference only to the full-time contract of service.
- (8) If the person's employer has been accustomed to pay to the person a sum to cover any special expenses entailed on the person by the nature of

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the person's employment, the sum so paid is not to be reckoned as part of the person's earnings.

- (9) If the person has been entitled to receive payment or allowances to cover the cost of expenses incurred in relation to travel, meals and accommodation during the person's employment, the payment or allowances are not to be included as part of the earnings.
- (10) If the person delivers to the Commissioner a statement in writing, verified by statutory declaration, setting out the amount of the person's earnings during any period, that statement is evidence that that amount was the earnings of the person during that period.

Division 4 – Payment of weekly payments

88. When weekly payments to be made

- (1) If the Commissioner determines that a person is entitled to weekly payments under this Act, the Commissioner is to pay the person weekly payments in relation to a period that begins on the day on which the determination is made.
- (2) The Commissioner is to make weekly payments to a person on a weekly or fortnightly basis, as determined by the Commissioner after consultation with the person.

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89. Entitlement to weekly payments where person ceases to reside in this State

A person who receives weekly payments under this Act and who ceases to reside in this State is not entitled to continue to receive the weekly payments unless the person proves, in the manner and at the intervals, if any, that are prescribed –

- (a) the person’s address and identity; and
- (b) that he or she continues to be incapacitated for work because he or she has incapacity of a degree equal to or greater than the degree of incapacity to which the calculation of the weekly payments relate.

90. Paid leave during period of incapacity

(1) In this section –

“long service leave entitlement period”, in relation to a person, means any period during which the person would be entitled, under the person’s contract of employment in force during the period of incapacity, to be absent from his or her employment on long service leave on full or part pay;

“recreational leave entitlement period”, in relation to a person, means any period

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during which the person would be entitled, under the person's contract of employment in force during the period of incapacity, to be absent from his or her employment on annual recreational leave on full pay.

- (2) If, during a period for which weekly payments would otherwise be payable to a person who has a compensable disease under this Act, there occurs any recreational leave entitlement period –
- (a) the person must be given by his or her employer, in lieu of his or her annual recreational leave in respect of that period, a similar period of leave on full pay –
 - (i) at some time within 3 months from the date of his or her return to work; or
 - (ii) at the termination of his or her right to weekly payments under this Act if he or she does not then return to work; or
 - (b) if the person so desires, the person may, by arrangement with his or her employer, take annual recreational leave during the period of incapacity for which weekly payments are payable.
- (3) If, during a period for which weekly payments would otherwise be payable to a person who has

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a compensable disease under this Act, there occurs any long service leave entitlement period –

- (a) the person must be given by his or her employer, in lieu of his or her long service leave in respect of that period, a similar period of leave on full or part pay –
 - (i) at some time within 3 months from the date of his or her return to work; or
 - (ii) at the termination of his or her right to weekly payments under this Act if he or she does not then return to work; or
 - (b) if the person so desires, the person may, by arrangement with his or her employer, take a period of long service leave during the period of incapacity for which weekly payments are payable.
- (4) If a person takes annual recreational leave or a period of long service leave during a period of incapacity in accordance with subsection (2) or (3), the person is not entitled to receive weekly payments during that annual recreational leave or long service leave.
- (5) An employer must not attempt to cause or require a person to take annual recreational leave or long service leave during a period of

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incapacity for which weekly payments are payable to the person.

Penalty: Fine not exceeding 100 penalty units.

91. When weekly payments may be terminated or reduced

- (1) Except in pursuance of a determination made by the Tribunal under section 58 or section 94, the Commissioner may, subject to this section, terminate or reduce a weekly payment made to a person only if –
 - (a) the payment is in respect of total incapacity and the person has returned to work; or
 - (b) the person –
 - (i) is receiving the weekly payment in respect of partial incapacity; and
 - (ii) is receiving weekly earnings in excess of the amount upon which the amount of the weekly payment was determined; or
 - (c) a medical practitioner who has examined the person has given a medical certificate certifying that, in the practitioner's opinion –

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- (i) the person has wholly recovered, or substantially recovered, from the effects of the asbestos-related disease in respect of which the payment is being made; or
 - (ii) the person's incapacity is no longer due, wholly or substantially, to that disease or another asbestos-related disease.
- (2) A certificate referred to in subsection (1)(c) is to specify the grounds upon which the opinion expressed in it is given.
- (3) If the Commissioner, for the reason specified in subsection (1)(c), intends to terminate or reduce a weekly payment made to a person, the Commissioner must serve on the person –
 - (a) notice of the Commissioner's intention; and
 - (b) if the Commissioner's intention to terminate or reduce is based on a medical certificate referred to in subsection (1)(c), a copy of that certificate.
- (4) A notice, referred to in subsection (3)(a), to a person must state that the Commissioner intends to –
 - (a) terminate the weekly payment being made to the person; or

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(b) reduce that payment by the amount specified in the notice –

at the expiration of a period of 10 business days from the day on which the notice is served on the person.

- (5) A notice referred to in subsection (3)(a) must contain a statement informing the person of the person's right to refer the termination or reduction of the weekly payments to the Tribunal for determination.
- (6) A person who has been served with a notice under subsection (3)(a) and who wishes to dispute the termination or reduction of the weekly payments being made to him or her may refer the matter to the Tribunal under section 94 or section 95.
- (7) A person may only refer the matter to the Tribunal under section 94 or section 95 within 40 business days from the date on which the person's weekly payments were terminated or reduced.

92. Weekly payments cease when determination made that person has imminently fatal asbestos-related disease

An entitlement, of a person who has made an application for compensation, to weekly payments under section 84 in relation to a disease ceases if the Commissioner receives

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from a medical panel a determination under this Act that the person has an imminently fatal asbestos-related disease.

93. Weekly payments cease on pensionable age

(1) In this section –

“pension age”, in relation to a person, means the date on which the person attains the pension age, within the meaning of the *Social Security Act 1991* of the Commonwealth, in relation to that person.

(2) Subject to subsection (3), an entitlement, of a person who has made an application for compensation, to weekly payments under section 84 in relation to a disease ceases –

(a) if the application is made before the date on which the person attains the pension age, on the person attaining that year of age; or

(b) if the application is made on or after the date on which the person attains the pension age –

(i) on the date one year after the day on which the application is made; or

(ii) if another date is prescribed, that date.

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- (3) If the terms and conditions of a person's employment permit the person to continue in that employment beyond the pension age, the person may refer to the Tribunal for determination the question as to whether or not the provisions of subsection (2) should apply to him or her.
- (4) The Tribunal may determine that weekly payments of compensation may be continued beyond the dates mentioned in subsection (2) in relation to a person who has referred a question to the Tribunal under subsection (3), if the Tribunal is satisfied that –
- (a) the terms of the person's employment would have entitled him or her to continue in that employment beyond the pension age; and
 - (b) the person, but for an asbestos-related disease, intended to continue in that employment beyond that age; and
 - (c) the incapacity of the person resulting from that disease will continue beyond the date on which he or she attains the pension age.
- (5) If the Tribunal makes a determination under subsection (4) that weekly payments may be continued beyond the dates mentioned in subsection (2) in relation to a person, the Tribunal must determine the period for which the payments are to be continued.

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94. Reference to Tribunal of refusal of Commissioner to pay weekly payments

- (1) A person –
- (a) in relation to whom the Commissioner has made a determination under section 70(1)(a) that the person is entitled to compensation; and
 - (b) who is aggrieved by a decision made by the Commissioner that the person is not entitled to weekly payments –

may refer the matter to the Tribunal.

- (2) If a decision made by the Commissioner that a person is not entitled to weekly payments is referred to the Tribunal under subsection (1), the Tribunal may determine the matter by making a decision in relation to the matter that the Commissioner may make under this Act.
- (3) A decision made by the Tribunal in accordance with subsection (2) is to be taken to be a decision made by the Commissioner under this Act, except that the decision may not be referred to the Tribunal.

95. Reference to Tribunal of matters relating to amount of weekly payments

- (1) If a person to whom weekly payments are payable under this Division, or the Commissioner, is of the opinion that the amount

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of the weekly payments is insufficient or excessive, the person or the Commissioner may refer the matter to the Tribunal.

- (2) If a matter is referred to the Tribunal under subsection (1) by a person or the Commissioner, the Tribunal is to determine the amount of weekly payments in respect of the person to whom the matter relates that appears to the Tribunal to be reasonable and appropriate in the circumstances.
- (3) A determination under subsection (2) in relation to a person is to be made having regard to –
 - (a) the current weekly earnings of another worker who is –
 - (i) of the same grade or classification as the person; and
 - (ii) employed by the same employer in similar work to the person; and
 - (b) the earnings that the person might reasonably have earned during the period of incapacity, if he or she had continued the employment he or she had in the relevant period; and
 - (c) any other relevant matter.
- (4) In determining the amount of weekly payments under subsection (2), the Tribunal is to have regard to the principle that a person should not receive, during a period of incapacity, weekly

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payments greater than the payments the person would have received if the person had worked in his or her usual employment during that period.

- (5) The amount of weekly payments determined by the Tribunal under subsection (2) is to be the amount of weekly payments payable to the person, although the amount may be a greater or lesser amount than the weekly payments otherwise payable under this Division.
- (6) If the weekly payments determined by the Tribunal under subsection (2) involve a reduction in the amount of weekly payments being made to a person, the Tribunal is to determine the date from which that reduction is to take effect.
- (7) The date determined under subsection (6) is to be a date that is not earlier than the date of the determination of the Tribunal.

96. Weekly payment may not be assigned, &c.

- (1) A weekly payment is not capable of –
 - (a) being assigned, charged, or taken in execution; or
 - (b) passing to any other person by operation of law.
- (2) No claim may be set off against a weekly payment.

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Part 8 – Compensation Payable to Family Members

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PART 8 – COMPENSATION PAYABLE TO FAMILY MEMBERS

97. Meaning of “total family amount”

- (1) For the purposes of this Part, the total family amount in relation to a person who has a compensable disease is the amount to which the person would have been entitled under section 72 if –
 - (a) an application for compensation had been made, after the commencement day, by the person and had been determined under section 70(1)(a); and
 - (b) the Commissioner had determined under section 70 that the person had an imminently fatal asbestos-related disease.
- (2) Despite subsection (1) and any other provision of this Act, if the Commissioner has paid compensation by way of a lump sum under this Act to a person who has a compensable disease, or his or her legal personal representatives, the total family amount in relation to the person is to be reduced by the amount of that lump sum already paid.

98. Compensation payable to family members

Subject to this Act, the compensation payable, as a lump sum, to all persons who –

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- (a) are members of the family of a person who has a compensable disease; and
- (b) are entitled to compensation under this Act –

is an amount equivalent to the total family amount in relation to the person who has a compensable disease, which amount is to be distributed, between the members of the family of the person who has a compensable disease, in accordance with Schedule 1.

99. Person with compensable disease may include stepchildren in family for purposes of this Act

- (1) A person who has a compensable disease may notify the Commissioner, in the relevant form, that a stepchild of the person is to be treated under this Act as if he or she were a natural child of the person.
- (2) If a notification is made under subsection (1) by a person, the stepchild specified in the notification is to be taken to be a natural child of the person for the purposes of this Act.
- (3) The relevant form, for the purposes of this section, is an approved form that is –
 - (a) completed and signed by the person who has a compensable disease; and
 - (b) witnessed by a person who is not the stepchild of the person.

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Part 9 – Persons to Whom Compensation to be Paid

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**PART 9 – PERSONS TO WHOM COMPENSATION TO
BE PAID**

100. Payment of compensation to persons entitled

Except as provided in section 101, all money payable to a person, as a lump sum, by way of compensation under this Act in accordance with a determination under this Act is to be paid to the person, or, if the person is deceased, to his or her legal personal representatives.

101. Payment of compensation to Public Trustee

- (1) If a person to whom money is payable under section 100 is under a legal disability, the Commissioner must determine to whom the money payable to that person is to be paid.
- (2) If the Commissioner has reasonable doubts about the nature of the dependency between the person under a legal disability and the legal guardian of that person, the Commissioner may determine that the money payable to the person under a legal disability is to be paid to the Public Trustee.
- (3) The Public Trustee –
 - (a) must invest, apply or otherwise deal with the money paid to the Public Trustee under subsection (1) for the benefit of the person entitled to the money, in the

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- manner, if any, and subject to the conditions, if any, that are prescribed; and
- (b) must cause the income from any money so invested to be paid to, or for the benefit of, that person.
- (4) If an amount of money payable as a lump sum under this Act to a person who is a member of the family of a person who has an asbestos-related disease cannot be paid to the first-mentioned person because his or her whereabouts are unknown, the Commissioner may determine that the money payable to the person is to be paid to the Public Trustee.
- (5) The Public Trustee –
- (a) must invest, apply or otherwise deal with the money paid to the Public Trustee under subsection (4) for the benefit of the person entitled to the money, in the manner, if any, and subject to the conditions, if any, that are prescribed; and
- (b) must cause the income from any money so invested to be paid to, or for the benefit of, that person, as soon as the Public Trustee is able to do so.

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**PART 10 – COMPENSATION AND DAMAGES UNDER
COMMON LAW OR OTHER LAWS**

Division 1 – Interpretation

102. Interpretation of Part 10

(1) In this Part –

“damages” means damages recoverable (whether by virtue of an enactment or otherwise) in respect of any civil liability, however arising.

(2) In this Part, a reference to –

(a) a lump sum amount received by a person under this Act in relation to an asbestos-related disease; or

(b) a lump sum amount to which a person is entitled under this Act in relation to an asbestos-related disease –

includes a reference to such a lump sum amount that relates in part to another asbestos-related disease.

103. Meaning of “relevant judgment or settlement”

(1) For the purposes of this Part, a relevant judgment or settlement is given or made in respect of a person in relation to an asbestos-related disease if –

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(a) the person entered into an agreement to accept from another person an amount by way of settlement of a claim for damages in relation to –

(i) the contraction of the disease by the person; or

(ii) the contraction of the disease by another person who has a compensable disease and of whose family the person is a member –

including by virtue of accepting any money paid into a court in satisfaction of a claim for damages in relation to the contraction of the disease; or

(b) a court has delivered a judgment that an amount is payable to the person by way of damages in relation to –

(i) the contraction of the disease by the person; or

(ii) the contraction of the disease by another person who has a compensable disease and of whose family the person is a member.

(2) For the purposes of this Part, if –

(a) a relevant judgment or settlement is given or made, or an action for damages

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is commenced, in respect of a person in relation to one or more asbestos-related diseases; and

(b) either –

(i) an application for compensation is made by the person in relation to one or more asbestos-related diseases; or

(ii) the person receives, by way of one or more lump sums, compensation under this Act in relation to one or more asbestos-related diseases pursuant to an application under section 33, section 74 or section 76 made by the person –

the disease or diseases to which the application for compensation relates, or in relation to which the lump sum or sums are paid, are to be taken to be the same disease or diseases as the disease or diseases to which the relevant judgment or settlement, or the action for damages, relates.

(3) Subsection (2) does not apply in relation to an application for compensation made by a person, or compensation received by the person by way of lump sums under this Act pursuant to an application made by the person under section 33, section 74 or section 76, if –

(a) the person establishes that –

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- (i) the relevant judgment or settlement that was given or made, or one or more documents by which the action for damages is commenced, specifies the asbestos-related disease or asbestos-related diseases to which the judgment, settlement or action relates; and
 - (ii) none of those diseases is the same disease as an asbestos-related disease to which the application for compensation relates, or the compensation is received by the person by way of lump sums under this Act, as the case may be; or
- (b) the person establishes, otherwise than in accordance with paragraph (a), that the asbestos-related disease, or asbestos-related diseases, to which the relevant judgment or settlement, or the action for damages, relates are not the same asbestos-related disease or asbestos-related diseases as the asbestos-related disease or asbestos-related diseases to which the application for compensation relates, or the compensation is received by the person by way of lump sums under this Act, as the case may be.
- (4) For the purposes of this Part, a reference to a relevant judgment or settlement, or an action for

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damages, includes a reference to such a judgment or settlement, or such an action, whether given or made, or commenced, in Australia or any other country or territory.

104. When action for damages is to be taken to begin for purposes of this Part

For the purposes of this Part, a person is to be taken to commence an action for damages in relation to an asbestos-related disease when the person –

- (a) gives to the person from whom the damages are, in effect, being claimed, notice in writing to the effect that damages are being claimed from the person in relation to the asbestos-related disease; or
- (b) commences proceedings in a court of competent jurisdiction in Australia or any other country or territory to recover damages from another person in relation to the asbestos-related disease –

whichever occurs first.

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Division 2 – Requirements in relation to common law actions

105. Person to notify Commissioner on commencing certain actions or receiving certain damages

- (1) A person who has received, in relation to an asbestos-related disease, a lump sum under this Act must, within 20 business days after –
 - (a) commencing, after the commencement day, an action for damages in relation to the asbestos-related disease; or
 - (b) a relevant judgment or settlement is given or made, after the commencement day, in respect of the person; or
 - (c) the person receives, after the commencement day, an amount as damages in relation to the asbestos-related disease –

notify the Commissioner in writing of the commencement of that action, the relevant judgment or settlement, or that he or she has received that amount, as the case may be.

Penalty: Fine not exceeding 200 penalty units.

- (2) A person who has made an application for compensation under this Act must, within 20 business days after receiving, in relation to an asbestos-related disease, a lump sum by way of compensation under –

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- (a) an enactment of a place other than this State; or
- (b) the *Workers Rehabilitation and Compensation Act 1988*; or
- (c) the *Workers Compensation Act 1927* –

notify the Commissioner in writing that he or she has received that compensation.

Penalty: Fine not exceeding 200 penalty units.

106. Certain actions not to commence until application for compensation determined

- (1) This section applies to –
 - (a) an action for damages, by a person who has a compensable disease, in relation to the contraction by the person, in the course of employment as a worker in connection with this State, of an asbestos-related disease; and
 - (b) an action for damages, by a member of the family of a person who has a compensable disease, in relation to the contraction, in the course of employment as a worker in connection with this State, of an asbestos-related disease by the person who has a compensable disease.
- (2) An action for damages to which this section applies in relation to an asbestos-related disease

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must not be commenced after the commencement day unless –

- (a) the person commencing the action has made an application for compensation in relation to the disease; and
 - (b) a determination in relation to the application for compensation has been made under section 70.
- (3) If an action for damages to which this section applies is, in contravention of subsection (2), commenced by a person after the commencement day, any relevant judgment or settlement made in relation to the action is void.
- (4) If –
- (a) a person has made an application for compensation in relation to the contraction by a person of an asbestos-related disease in the course of employment as a worker; and
 - (b) before that application for compensation was made, the operation of an enactment relating to the limitation of actions did not prevent the taking by that person of an action for damages to which this section applies; and
 - (c) an action for damages to which this section applies is, within 10 business days after the making of a determination under section 70 in relation to the

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application for compensation,
commenced by the person, or another
person, in relation to the contraction of
the asbestos-related disease referred to in
paragraph (a) –

the enactment relating to the limitation of actions
does not prevent the taking of the action for
damages.

107. No entitlement to compensation if certain settlements, &c., made before commencement day

- (1) If, before the commencement day, a relevant judgment or settlement is given or made in respect of a person who has a compensable disease, or a member of the family of such a person –
 - (a) the person who has a compensable disease; and
 - (b) any member of the family of the person who has the disease –

are not entitled to compensation under this Act,
or expenses under Part 11, in relation to the
disease.

- (2) Subsection (1) does not apply in relation to a relevant judgment or settlement that is given or made in respect of –
 - (a) a person who has a compensable disease;
or

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(b) a member of the family of such a person –

if it is established that the person or persons entitled to the amount of the relevant judgment or settlement are unlikely to receive all of the amount of the relevant judgment or settlement.

(3) Nothing in section 110 or 111 is to be taken to affect the application of this section.

Division 3 – Effect of common law judgments

108. References to receipt of moneys

In this Division, a reference to an amount of money received by a person in accordance with a relevant judgment or settlement is to be taken to be the amount obtained by deducting from the amount of money so received –

(a) any amount received in accordance with that judgment or settlement in respect of legal costs; and

(b) any amount paid by the person in respect of legal costs incurred by the person in respect of the action for damages to which the relevant judgment or settlement relates.

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109. Where money received under settlements, &c., after application for compensation made

(1) If a person –

(a) receives one or more lump sum amounts under this Act in relation to an asbestos-related disease; and

(b) then receives, in accordance with a relevant judgment or settlement in relation to the disease, an amount of money that is greater than or equal to the lump sum amounts, referred to in paragraph (a), received by the person –

there is payable to the Commissioner by the person an amount equivalent to those lump sum amounts.

(2) If a person –

(a) receives one or more lump sum amounts under this Act in relation to an asbestos-related disease; and

(b) then receives, in accordance with a relevant judgment or settlement in relation to the disease, an amount of money that is less than the total of the lump sum amounts, referred to in paragraph (a), received by the person –

there is payable to the Commissioner by the person an amount equivalent to the amount of

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money received in accordance with the relevant judgment or settlement.

- (3) This subsection applies to a person in relation to an asbestos-related disease if –
- (a) a person receives one or more lump sum amounts under this Act in relation to the disease; and
 - (b) then the person receives an amount of money in accordance with a relevant judgment or settlement in relation to the disease; and
 - (c) then the person applies under section 74 or 76 for compensation under this Act by way of a lump sum in relation to the disease; and
 - (d) a determination is made under section 75 or 77 that the person is entitled to receive compensation under that section.
- (4) If subsection (3) applies to a person in relation to an asbestos-related disease, then, despite section 75 or 77, the person is only entitled to receive, in relation to that disease, compensation by way of a lump sum under that section if the amount received in relation to the disease by the person under the relevant judgment or settlement referred to in subsection (3) is less than the total of –
- (a) the lump sum amounts to which the person would, but for the operation of

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subsection (5), be entitled under section 75 or 77 in relation to that disease; and

- (b) the lump sum amounts already received by the person under Division 1 of Part 7 in relation to that disease; and
- (c) the lump sum amount, if any, received by the person under section 75, in relation to that disease.

(5) If –

- (a) a person is entitled to receive, in relation to a disease, compensation in accordance with subsection (4); and
- (b) subsection (1) applied to the person in relation to the disease –

then, despite section 75 or 77, the amount of compensation by way of a lump sum under section 75 or 77 that the person is entitled to receive in relation to that disease is the amount determined in accordance with subsection (6) in respect of the person in relation to the disease.

- (6) For the purposes of subsection (5), the amount in respect of a person in relation to a disease is the amount equal to the amount that, but for that subsection, the person would have been entitled to receive as compensation by way of a lump sum under section 75 or 77 in relation to the disease, less the windfall amount in respect of the person in relation to the disease.

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- (7) For the purposes of subsection (6) the windfall amount in respect of a person in relation to a disease is the amount by which the relevant judgment or settlement in respect of the person in relation to the disease is greater than the amount of compensation by way of lump sums that have already been received by the person in relation to the disease.

110. Where money received under settlement, &c., before application made by person with imminently fatal compensable disease

- (1) This subsection applies to a person in relation to an asbestos-related disease if the person –
- (a) receives an amount of money in accordance with a relevant judgment or settlement in relation to the disease; and
 - (b) then makes an application for compensation in relation to the disease; and
 - (c) a determination, relating to the application for compensation, is made under section 70(1)(a) that the person is entitled to compensation by way of a lump sum in relation to the disease; and
 - (d) a determination, relating to the application for compensation, is made under section 70(2)(a) that the person has

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an imminently fatal asbestos-related disease.

- (2) If subsection (1) applies to a person in relation to a disease, then, despite Division 1 of Part 7, the person is only entitled under section 70(1)(a) to receive an amount of compensation by way of a lump sum in accordance with that Division if the amount received in accordance with the relevant judgment or settlement in relation to the disease is less than the amount that, but for subsection (3), would be payable to the person, in accordance with Division 1 of Part 7, in relation to the disease.
- (3) If subsection (1) applies to a person in relation to a disease, then, despite Division 1 of Part 7, the amount of compensation by way of a lump sum payable to the person under Division 1 of Part 7 is the relevant amount in relation to the person.
- (4) For the purposes of subsection (3), the relevant amount in relation to the person is the total of –
 - (a) 360 units; and
 - (b) the amount to which the person would have, but for this subsection, been entitled under section 72(2)(b) or section 72(4)(b), as the case may be –

less the amount received in accordance with the relevant judgment or settlement in relation to the disease.

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111. Where money received under settlement, &c., before application made by person with non-imminently fatal compensable disease

- (1) This subsection applies to a person in relation to an asbestos-related disease if the person –
 - (a) receives an amount of money in accordance with a relevant judgment or settlement in relation to the disease; and
 - (b) then makes an application for compensation in relation to the disease; and
 - (c) a determination, relating to the application for compensation, is made under section 70(1)(a) that the person is entitled to compensation by way of a lump sum in relation to the disease; and
 - (d) a determination, relating to the application for compensation, is made under section 70(2)(b) that the person has a non-imminently fatal asbestos-related disease.
- (2) If subsection (1) applies to a person in relation to a disease, then, despite Division 1 of Part 7, the person is only entitled under section 70(1)(a) to receive an amount of compensation by way of a lump sum in accordance with that Division if the amount received in accordance with the relevant judgment or settlement in relation to the disease is less than the amount equal to 360 compensation units.

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- (3) If subsection (1) applies to a person in relation to a disease, then, despite Division 1 of Part 7, the amount of compensation by way of a lump sum payable to the person under Division 1 of Part 7 is the relevant amount in relation to the person.
- (4) For the purposes of subsection (3) the relevant amount in relation to the person is the amount to which the person would be entitled under Division 1 of Part 7, less the amount received in accordance with the relevant judgment or settlement in relation to the disease.
- (5) This subsection applies to a person in relation to an asbestos-related disease if –
 - (a) the person receives an amount of money in accordance with a relevant judgment or settlement in relation to the disease; and
 - (b) then receives an amount of compensation by way of a lump sum in accordance with subsection (3); and
 - (c) then the person applies under section 74 or 76 for compensation under this Act by way of a lump sum in relation to the disease; and
 - (d) a determination is made under section 75 or 77 that the person is entitled to receive compensation under that section.
- (6) If subsection (5) applies to a person in relation to an asbestos-related disease, then, despite

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section 75 or 77, the person is only entitled to receive, in relation to that disease, compensation by way of a lump sum under that section if the amount received in relation to the disease by the person under the relevant judgment or settlement referred to in subsection (5) is less than the total of –

- (a) the lump sum amounts to which the person would, but for the operation of subsection (5), be entitled under section 75 or 77 in relation to that disease; and
- (b) the lump sum amounts already received by the person under Division 1 of Part 7 in relation to that disease; and
- (c) the lump sum amount, if any, received by the person under section 75, in relation to that disease.

(7) If –

- (a) a person is entitled to receive, in relation to a disease, compensation in accordance with subsection (6); and
- (b) subsection (1) applied to the person in relation to the disease –

then, despite section 75 or 77, the amount of compensation by way of a lump sum under section 75 or 77 that the person is entitled to receive in relation to that disease is the relevant

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amount in respect of the person in relation to the disease.

- (8) For the purposes of subsection (7), the relevant amount in respect of a person in relation to a disease is the amount equal to the amount that, but for that subsection, the person would have been entitled to receive as compensation by way of a lump sum under section 75 or 77 in relation to the disease, less the windfall amount in respect of the person in relation to the disease.
- (9) For the purposes of subsection (8) the windfall amount in respect of a person in relation to a disease is the amount by which the relevant judgment or settlement in respect of the person in relation to the disease is greater than the total of –
- (a) the lump sum amounts to which the person would, but for the operation of subsection (5), be entitled under section 75 or 77 in relation to that disease; and
 - (b) the lump sum amounts already received by the person under Division 1 of Part 7 in relation to that disease; and
 - (c) the lump sum amount, if any, received by the person under section 75, in relation to that disease.

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112. Where money received under settlement, &c., by member of family

- (1) This subsection applies to a person in relation to an asbestos-related disease if the person –
 - (a) receives an amount of money in accordance with a relevant judgment or settlement in relation to the disease; and
 - (b) then makes an application for compensation in relation to the disease; and
 - (c) a determination, relating to the application for compensation, is made under section 70(4)(a) that the person is entitled to compensation by way of a lump sum in relation to the disease.
- (2) If subsection (1) applies to a person in relation to a disease, then, despite section 98, the person is only entitled under section 70(4)(a) to receive an amount of compensation if the amount received in accordance with the relevant judgment or settlement in relation to the disease is less than the relevant amount in relation to the person.
- (3) If subsection (1) applies to a person in relation to a disease, then, despite section 98, the amount of compensation by way of a lump sum under this Act in relation to the disease to which the person is entitled under section 98 is the relevant amount in respect of the person in relation to the disease.

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- (4) For the purposes of subsections (2) and (3), the relevant amount in respect of a person in relation to the disease is the proportion of the family amount, referred to in section 97, that the person may be provided in accordance with Schedule 1 as it applies in relation to the person who is a compensable person of whose family the person is a member, less the amount received in accordance with the relevant judgment or settlement in relation to the disease.

113. Debts due and payable

An amount that a person is required under this section to pay to the Commissioner is a debt due and payable to the Commissioner and the Commissioner may, in a court of competent jurisdiction, sue and recover the amount from the person.

Division 4 – Statutory compensation under other laws

114. Person not to receive statutory compensation under more than one Act

- (1) Compensation under this Act is not payable, in respect of a person who has an asbestos-related disease, to the extent that compensation has been received in relation to that disease under –
- (a) an enactment of a place other than this State; or

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- (b) the *Workers Rehabilitation and Compensation Act 1988*; or
 - (c) the *Workers Compensation Act 1927*.
- (2) If a person receives compensation under this Act in relation to an asbestos-related disease and, in relation to the same disease, subsequently receives compensation under an enactment of a place other than this State –
 - (a) the amount described in subsection (3) is a debt due and payable to the Commissioner; and
 - (b) the Commissioner may, in a court of competent jurisdiction, sue and recover the amount from the person.
- (3) The amount that is recoverable under subsection (2) in relation to the asbestos-related disease referred to in that subsection is the lesser of the following:
 - (a) an amount equivalent to the amount of compensation by way of one or more lump sums paid under this Act in relation to the asbestos-related disease;
 - (b) an amount equivalent to the amount of compensation received in relation to the asbestos-related disease under the enactment of a place other than this State.

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- (4) Expenses of the kind referred to in Part 11 that relate to a person who has an asbestos-related disease are not payable under this Act to the extent that those expenses have been paid under –
- (a) an enactment of a place other than this State; or
 - (b) the *Workers Rehabilitation and Compensation Act 1988*; or
 - (c) the *Workers Compensation Act 1927*.

115. Choice of law

- (1) In this section –

“a State’s legislation about damages for a work-related injury” means –

- (a) for this State, this section and any other provision of this Act providing for the interpretation of anything in this section; and
- (b) for any other State, any provisions of a law of that State that is declared by the regulations to be the State’s legislation about damages for a work-related injury;

“injury” includes anything that is within the scope of a corresponding term in the

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statutory workers compensation scheme
of another State and that consists of an
asbestos-related disease;

“substantive law” includes –

- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action; and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and
- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and

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(f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and

(g) a provision of a State’s legislation about damages for a work-related injury, whether or not it would be otherwise regarded as procedural in nature –

but does not include a law prescribing rules for choice of law.

(2) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid) the substantive law of that State is the substantive law that governs –

(a) whether or not a claim for damages in respect of the injury can be made; and

(b) if the claim can be made, the determination of the claim.

(3) This section does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.

(4) For the purposes of this section –

(a) a reference to an employer includes anything that is within the scope of a corresponding term in the statutory

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- workers compensation scheme of another State; and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State; and
- (c) a reference to a worker's employer includes a reference to a person who is vicariously liable for the acts of the employer and a person for whose acts the employer is vicariously liable.
- (5) For the purposes of this section, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.
- (6) It makes no difference for the purpose of this section that, under the substantive law of a State other than the State with which the worker's employment is connected –
- (a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or
- (b) the circumstances on which the claim is based do not give rise to a cause of action.

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- (7) This section only applies to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury if the injury was caused by –
 - (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or
 - (b) a breach of contract by the worker's employer.

- (8) This section also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if –
 - (a) the worker's employment is connected with this State; and
 - (b) the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

- (9) Subsection (7)(a) and subsection (8) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

- (10) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it –

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- (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or
 - (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.
- (11) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

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116. Interpretation of Part 11

In this Part, unless the contrary intention appears –

“ambulance services” means the conveyance of a person by any practicable means to –

- (a) the nearest suitable hospital or rehabilitation centre or other place for the purpose of receiving medical, hospital or rehabilitation services; or
- (b) his or her place of residence after receiving or seeking any of those services;

“compensable person” means a person –

- (a) who has a compensable disease; and
- (b) in relation to whom a determination has been made under section 70(1)(a) that the person is entitled to compensation under this Act;

“compensable services” means –

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- (a) medical services, hospital services, nursing services or ambulance services; or
- (b) constant attendance services; or
- (c) rehabilitation services;

“constant attendance services” means the services of a person (other than a member of the family of the person who has a compensable disease) by way of regular or constant personal attendance on a person who has a compensable disease, if the medical condition of the person who has a compensable disease is such that the person must have the regular or constant personal attendance of another person, but does not include hospital services or nursing services;

“dentist” means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as a dentist;

“hospital services” means –

- (a) maintenance, attendance, and treatment, at a public or private hospital; or
- (b) the provision or supply by a public or private hospital of –

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- (i) medical attendance or medical treatment; or
- (ii) nursing attendance; or
- (iii) medicines, medical or surgical supplies, or other curative appliances or apparatus; or
- (iv) other usual or necessary hospital services;

“medical services” means any of the following services required by a person because the person has an asbestos-related disease:

- (a) attendance, examination, or treatment of any kind, by, or under the supervision of, a medical practitioner, dentist, physiotherapist or psychologist;
- (b) the provision, maintenance, repair, adjustment or replacement of any medical or surgical aids or curative appliances or apparatus;
- (c) the provision by a pharmacist of medicines or materials;
- (d) any examination, test, or analysis, that is carried out on, or in relation to, a person who has a compensable disease, at the

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request or direction of a medical
practitioner, dentist,
physiotherapist or psychologist;

- (e) the provision of a report or certificate in respect of an examination, test, or analysis, that is referred to in paragraph (d);

“nurse” means a registered nurse or an enrolled nurse;

“nursing services” means nursing services rendered by a nurse otherwise than at a hospital or as a member of the nursing staff of a hospital;

“pharmacist” means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the pharmacy profession;

“physiotherapist” means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the physiotherapy profession;

“psychologist” means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the psychology profession;

“rehabilitation services” means –

- (a) treatment, training, or other assistance, provided to facilitate

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or assist a person’s rehabilitation;
or

(b) the supply of material or equipment in respect of any occupational therapy projects undertaken by a person; or

(c) any necessary and reasonable modifications required to be made to a person’s workplace, place of residence or motor vehicle –

and includes workplace rehabilitation services;

“workplace rehabilitation services” has the same meaning as it has in the *Workers Rehabilitation and Compensation Act 1988*.

117. Funeral expenses payable

If a compensable person has died after the commencement day or within 12 months before that day, the reasonable expenses, not being more than the amount prescribed by regulations, of the person’s burial or cremation are payable by the Commissioner.

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118. Medical, &c., expenses payable for imminently fatal disease

- (1) The reasonable expenses, necessarily incurred by a compensable person after the Commissioner has made a determination under this Act that the person has an imminently fatal asbestos-related disease, for compensable services that are –
 - (a) provided to the person after the determination by the Commissioner; and
 - (b) required by the person as a result of the person having an asbestos-related disease –

are payable by the Commissioner up to a total amount of 125 expenses units in respect of all such expenses paid by the Commissioner in relation to the person.

- (2) Subsection (3) applies in relation to expenses if –
 - (a) the expenses are incurred by a compensable person for compensable services after the Commissioner has made a determination under this Act that the person has an imminently fatal asbestos-related disease; and
 - (b) were the expenses to be added to the total of all such expenses, incurred after the determination was made, that have been paid by the Commissioner in relation to the person, the amount would be more than 125 expenses units.

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- (3) If this subsection applies in relation to expenses, the Commissioner –
 - (a) must review the case of the compensable person to whom the expenses relate; and
 - (b) may, in his or her discretion, pay the expenses or refuse to pay the expense and any further such expenses.
- (4) In this section, a reference to a number of expenses units is a reference to the amount obtained by multiplying the basic salary by that number.

119. Medical, &c., expenses payable if non-imminently fatal disease

The reasonable expenses that are –

- (a) for compensable services; and
- (b) necessarily incurred by a compensable person after the person’s application for compensation has been determined under section 70(1)(a) and before the Commissioner has made, if at all, a determination under this Act that the person has an imminently fatal asbestos-related disease; and
- (c) required by the person as a result of the person having an asbestos-related disease –

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are payable by the Commissioner.

120. Travelling expenses

- (1) The Commissioner is to pay the lesser of –
 - (a) the reasonable expenses necessarily incurred by a compensable person, after the commencement day, for travelling and maintenance in connection with all or any of the following purposes:
 - (i) to undergo any examination or test the compensable person is required to undergo by a medical professional, the Commissioner or the Tribunal;
 - (ii) to obtain the medical services, hospital services or rehabilitation services that the compensable person is entitled to have paid by the Commissioner under this Act; or
 - (b) the amount, if any, prescribed for the purposes of this paragraph.
- (2) In addition to paying the reasonable expenses incurred by a compensable person under subsection (1), if subsection (3) applies the Commissioner is liable to pay the reasonable expenses necessarily incurred by a person who attends the compensable person while the

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compensable person is travelling in connection with a purpose to which subsection (1) applies.

- (3) This subsection applies in relation to a person attending a compensable person if a medical practitioner certifies, in writing, that it is necessary in the circumstances that the compensable person be accompanied by some other person while the compensable person is travelling for a purpose specified in subsection (1).
- (4) If the reasonable expenses necessarily incurred –
- (a) by a person for travelling and maintenance in connection with all or any of the purposes specified in subsection (1); or
 - (b) by a person who attends a person who has a compensable disease while the person who has a compensable disease is travelling in connection with such a purpose –

involve the use of a private motor vehicle, the amount payable under subsection (2) for the use of that motor vehicle is to be calculated at the State Service rate.

- (5) For the purposes of subsection (4), the State Service rate is the rate payable to an occasional user of a private motor vehicle under the Tasmanian State Service Award or any industrial award, agreement or determination that replaces that award.

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121. How claim for payment of expenses may be made

- (1) A compensable person, a member of the family of a compensable person, or the legal personal representative of a compensable person or of a member of the family of a compensable person, may lodge with the Commissioner a claim for the payment of expenses that the Commissioner is liable to pay under this Part.
- (2) A claim under subsection (1) is to be made in the approved form and lodged with the Commissioner.
- (3) If a claim under subsection (1) by a person in relation to expenses that the person has not paid is not lodged with the Commissioner within 10 business days after the person has received the account for the services, the Commissioner is not liable to pay any fees incurred for late payment of the account.

122. Determination of claims for payment of expenses

- (1) Within 10 business days of receiving a claim under section 121(1) for expenses, the Commissioner –
 - (a) must, under section 123, if the expenses have not been paid, pay the expenses or, if the expenses have been paid by a person, reimburse to the person the amount of the expenses; or

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- (b) must –
 - (i) serve the person who lodged the claim with notice in writing disputing the claim; and
 - (ii) if the expense has not been paid, notify in writing the person who provided the compensable service, if any, to which the claim relates that liability for the expenses is disputed and outline the reasons for disputing the liability; and
 - (iii) if the refusal of the Commissioner to pay the expenses relates to a medical question, refer the matter to a medical panel.
- (2) A notice under subsection (1)(b) to a person who lodged a claim for expenses is to –
 - (a) state that the Commissioner disputes liability to pay the expenses; and
 - (b) state the reasons why the Commissioner disputes liability to pay the expenses; and
 - (c) attach or identify the medical or other evidence that the Commissioner relies on for disputing liability to pay the expenses; and

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- (d) if the refusal of the Commissioner to pay the expenses relates to a medical question, advise the person that the matter has been referred to a medical panel.
- (3) A notice under subsection (1)(b) to a person who lodged a claim for expenses is also to state whether the Commissioner disputes –
- (a) only the expenses to which the claim for expenses relates; or
 - (b) all –
 - (i) expenses of a specified kind; or
 - (ii) expenses incurred with a particular person who supplies medical, hospital, nursing, constant attendance, rehabilitation or ambulance services; or
 - (iii) travelling and maintenance expenses related to the provision of medical, hospital, nursing, constant attendance, rehabilitation or ambulance services; or
 - (c) liability to pay expenses of any kind whatsoever claimed by the person under this Part.

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- (4) If the Commissioner has served on a person a notice for the purposes of subsection (1)(b) disputing expenses of a kind referred to in subsection (3)(b), the Commissioner is not required to comply with this section in respect of any other claim subsequently received from the person –
- (a) for payment of an expense of the same kind; or
 - (b) incurred with the same particular person, referred to in the notice, who provides the service to which the expenses relate –
- until a relevant determination is made in relation to the expenses.
- (5) For the purposes of subsection (4), a relevant determination in relation to the expenses is –
- (a) a determination by the Tribunal that the Commissioner is liable to pay the expenses; or
 - (b) a determination by a medical panel that in the opinion of the medical panel the expenses are reasonable, necessarily incurred and required by the person as a result of the person having an asbestos-related disease.
- (6) If the Commissioner has served on a person a notice for the purposes of subsection (1)(b) disputing expenses of a kind referred to in subsection (3)(c), the Commissioner is not

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required to comply with this section in respect of any other claim subsequently received from the person until –

- (a) the Tribunal has determined that the Commissioner is liable to pay the expenses to which the notice relates; or
 - (b) a medical panel has advised the Commissioner that in the opinion of the medical panel the expenses are reasonable, necessarily incurred and required by the person as a result of the person having an asbestos-related disease.
- (7) If the Commissioner fails to serve on a person a notice for the purposes of subsection (1)(b) as required by this section, the Commissioner is to be taken to have accepted liability to pay the expenses to which the notice relates.

123. Persons to whom expenses under this Part are to be paid

(1) In this section –

“relevant person” means –

- (a) a compensable person; or
- (b) if a compensable person is deceased, his or her legal personal representatives; or

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(c) a member of the family of a compensable person; or

(d) if a member of the family of a compensable person is deceased, his or her legal personal representatives;

“relevant reason” means by reason of any contract, agreement, or arrangement, made by a relevant person or by reason of such a person being a contributor or subscriber to any institution, fund or scheme.

- (2) If the Commissioner is required under section 117, 118 or 119 to pay expenses for a compensable service or for the burial or cremation of a person, the Commissioner is, to the extent provided in this section, to pay those expenses to the person or body of persons who performed the service or carried out the burial or cremation.
- (3) Despite subsection (2), if another person has paid in whole or in part for the compensable service or the expenses of the burial or cremation of a compensable person, the Commissioner, to the extent provided by this section, is to reimburse, to the person who paid the amount, the amount paid.
- (4) If a relevant person is entitled, for a relevant reason, to any compensable services or to the

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person's burial or cremation free of charge or at a reduced rate of charge –

- (a) the amount that the Commissioner is liable to pay in respect of the expenses of that service, burial or cremation is not thereby reduced; and
 - (b) after payment of the amount (if any) actually owing to the person or body of persons who provided the service or performed the burial or cremation, the Commissioner is to pay the balance of the expenses, to the extent provided by this section, as the case requires, to a relevant person.
- (5) The payment of the reasonable expenses of any service, repair or replacement, or burial or cremation expenses under this section, including upon the determination of the Tribunal, discharges from liability in respect of the expenses of that service, repair or replacement, or burial or cremation –
- (a) the compensable person and his or her legal personal representatives; and
 - (b) the members of his or her family; and
 - (c) every other person.
- (6) No action, claim or demand may be brought or allowed by or in favour of any person against a relevant person for the payment or recovery of the relevant expenses.

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- (7) For the purposes of subsection (6), the relevant expenses are –
- (a) any expenses that the Commissioner is liable to pay under subsection (2); or
 - (b) the difference between –
 - (i) the amount charged by a medical practitioner, in relation to medical treatment provided to or carried out on a compensable person for any matter in respect of which the Commissioner is liable to pay such expenses; and
 - (ii) the amount of the fee referred to in section 176(a) or (b) in respect of that treatment.

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PART 12 – DISPUTE RESOLUTION

Division 1 – Referral of matters to Tribunal

124. Commissioner’s determination of application may be referred to Tribunal

- (1) A person who has made an application for compensation under this Act may refer to the Tribunal a determination of the Commissioner under section 70 in relation to the application.
- (2) A person may only refer to the Tribunal under subsection (1) a determination of the Commissioner under section 70 within 40 business days after the person receives notice of the determination under section 70(6).
- (3) If a determination of the Commissioner under section 70 in relation to an application for compensation is referred to the Tribunal under this section, the Tribunal is to determine the referral by making under that section a determination in relation to the matter that the Commissioner could make.
- (4) Despite subsection (3), section 71 does not apply to the Tribunal.
- (5) A determination by the Tribunal of a matter in accordance with subsection (3) is to be taken to be a determination of the Commissioner under section 70 except that the determination may not be referred to the Tribunal.

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125. Refusal to increase lump sum may be referred to Tribunal

- (1) A person who has made an application under section 74 or section 76 may refer to the Tribunal a determination of the Commissioner under section 75 or section 77 in relation to the application.
- (2) A person may only refer to the Tribunal under subsection (1) a determination of the Commissioner under section 75 or section 77 within 40 business days after the person receives notice of the determination under section 75(6) or section 77(6).
- (3) If a determination of the Commissioner under section 75 or section 77 is referred to the Tribunal under this section, the Tribunal is to determine the referral by making under that section a determination in relation to the matter that the Commissioner could make.
- (4) Despite subsection (3), section 71 does not apply to the Tribunal.
- (5) A determination by the Tribunal of a matter in accordance with subsection (3) is to be taken to be a determination of the Commissioner under section 75 or section 77, as the case may be, except that the determination may not be referred to the Tribunal under this section.

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126. Questions as to whether Commissioner required to pay expenses may be referred to Tribunal

- (1) A compensable person, a member of the family of a compensable person, or the Commissioner, may refer to the Tribunal a question as to –
 - (a) whether the Commissioner is required under this Act to pay any or all of the expenses specified in a claim under section 121(1); or
 - (b) whether the services to which the expenses relate were required by a person as a result of the person having an asbestos-related disease or were necessarily incurred; or
 - (c) whether the amount of the expenses specified in a claim under section 121(1) is reasonable; or
 - (d) the period for which any constant attendance services are to be provided.
- (2) The Tribunal must –
 - (a) if the Tribunal is satisfied that it is reasonably arguable that an expense, type of expense or any treatment was required by the person as a result of the person having an asbestos-related disease, was necessarily incurred and was reasonable, order the Commissioner to pay the expense; or

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- (b) if the Tribunal is satisfied that it is reasonably arguable that an expense, type of expense or any treatment was not required by the person as a result of the person having an asbestos-related disease, was not necessarily incurred or was not reasonable, order that the Commissioner is not liable to pay the expense, such expenses or such treatment.
- (3) The Tribunal may order that the Commissioner is entitled to recover from a person a payment for an expense that the Commissioner has paid as required by this Part, if the Tribunal is satisfied that the person's claim for payment of the expense was fraudulent.

127. Question as to apportionment between family members may be referred to Tribunal

- (1) A person who is of the opinion that he or she is a member of the family of a person who has a compensable disease may refer to the Tribunal for determination the question as to –
 - (a) who are members of the family of the person who has a compensable disease; or
 - (b) the apportionment of the total lump sum to which members of the family of the person who has a compensable disease are entitled in accordance with Part 8.

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- (2) A person who refers a matter to the Tribunal under subsection (1) and who is of the opinion that he or she is a member of the family of a person who has a compensable disease –
 - (a) must, within 10 business days, take all reasonable steps to notify each other member, if any, of the family of the person who has a compensable disease of the reference of the matter to the Tribunal; and
 - (b) must provide to the Tribunal evidence that he or she has satisfied the requirements of paragraph (a).
- (3) A member of the family of the person, who has a compensable disease, to whom a matter referred under subsection (1) relates, may, before the hearing of the referral, give notice to the Tribunal that he or she wishes to be joined as a party to the referral of the matter to the Tribunal.
- (4) A person who gives notice to the Tribunal under subsection (3) in relation to a referral of a matter is joined as a party to the proceeding in relation to the referral of the matter.
- (5) The Registrar must notify each party to a proceeding if another party is joined to the proceeding under subsection (4).
- (6) The Tribunal is to determine a referral made to it in accordance with this section by determining, as the case may be –

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- (a) who are members of the family of the person who has a compensable disease; or
- (b) the apportionment of the total lump sum to which members of the family of the person who has a compensable disease are entitled in accordance with Part 8.

128. How referrals to be made to Tribunal

- (1) A person who may refer a matter to the Tribunal under this Act may only refer the matter by filing with the Registrar an application, in the approved form, for referral.
- (2) If an application for referral is filed with the Registrar under subsection (1), the Registrar must, as soon as practicable –
 - (a) forward the application to the Tribunal; and
 - (b) arrange a time and a place for the hearing and determination by the Tribunal of the application; and
 - (c) notify the parties of the time and place for the hearing and determination of the application by the Tribunal.
- (3) The Tribunal may, in its discretion, by notice to a person, join the person as a party to a proceeding if the Tribunal is satisfied that that

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person has a sufficient interest in the matter to which the application for referral relates.

- (4) The Registrar must notify each party to a proceeding if another party is joined to the proceeding under subsection (3).

Division 2 – Asbestos Compensation Tribunal

129. Asbestos Compensation Tribunal

- (1) The Asbestos Compensation Tribunal is established for the purposes of this Act.
- (2) The persons who are from time to time Commissioners, or part-time Commissioners, within the meaning of the *Workers Rehabilitation and Compensation Act 1988*, are the members of the Asbestos Compensation Tribunal.
- (3) The person who is from time to time the Chief Commissioner, within the meaning of the *Workers Rehabilitation and Compensation Act 1988*, is the Chief Commissioner of the Asbestos Compensation Tribunal.
- (4) Despite subsection (3), if a person is, under the *Workers Rehabilitation and Compensation Act 1988*, acting as the Chief Commissioner, within the meaning of that Act, that person is, while so acting, the Chief Commissioner of the Asbestos Compensation Tribunal.

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130. Functions and powers of Tribunal

- (1) The functions of the Tribunal are –
 - (a) to determine the matters referred to the Tribunal under this Act; and
 - (b) any other functions conferred on the Tribunal under this or any other Act.
- (2) The Tribunal has the powers necessary to perform its functions.

131. Exclusive jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction to perform the functions imposed, and exercise the powers conferred, on it under this Act or any other Act.
- (2) Proceedings in respect of compensation under this Act, or the payment of expenses under this Act, may not be brought before any person, court or tribunal other than the Tribunal.
- (3) Subsection (2) does not apply to appeals to the Supreme Court in respect of any proceedings before the Tribunal.

132. Administrative functions of Chief Commissioner of Tribunal

- (1) Subject to this Act, the Chief Commissioner of the Tribunal is responsible for the management of the administrative affairs of the Tribunal.

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- (2) The Chief Commissioner of the Tribunal is responsible for allocating the work of the Tribunal.

133. Registrar and Deputy Registrars of Tribunal

- (1) The persons who are from time to time the Registrar, or Deputy Registrars, of the Workers Rehabilitation and Compensation Tribunal are the Registrar, and the Deputy Registrars, respectively, of the Asbestos Compensation Tribunal.
- (2) The Registrar has the functions, and may exercise the powers, conferred or imposed on the Registrar under this Act.
- (3) The Registrar, in performing the functions, or exercising the powers, of the Registrar under this Act is subject to the directions of the Chief Commissioner of the Tribunal.
- (4) A Deputy Registrar may perform the functions, or exercise the powers, of the Registrar under this Act, subject to the directions of the Registrar.
- (5) Any act or other thing done by or before a Deputy Registrar has the same force and effect as if it were done by or before the Registrar.

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134. Annual report

- (1) The Chief Commissioner of the Tribunal, no later than 31 October after the end of each financial year, is to prepare and give to the Minister a report on the operation of the Tribunal during the financial year.
- (2) The Minister is to cause a copy of the annual report to be laid on the table of each House of Parliament within the first 15 sitting-days of the House after the report is received by the Minister.

135. Record of Tribunal

- (1) The record of the Tribunal in respect of a proceeding consists of the following:
 - (a) the application for referral, filed with the Registrar, to which the proceeding relates;
 - (b) a summary of the facts of the matter to be resolved in the referral, as determined and recorded by the Tribunal during the hearing of the matter referred;
 - (c) any written medical advice or medical opinion provided to the Tribunal under this Act;
 - (d) the recording made in accordance with section 145;

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- (e) any notes of the proceeding made by the Tribunal;
 - (f) any order made by the Tribunal in relation to the proceeding.
- (2) The record of the Tribunal in respect of a proceeding –
- (a) is to be available free of charge by a party to the proceeding and a person acting with the authority of a party to the proceeding; and
 - (b) is to be available for production before a court or a judge for the purposes of any proceedings before the court or judge.

Division 3 – Hearings

136. Tribunal may amend application or require further information to be provided

- (1) The Tribunal may amend any application for referral, or any other application made under this Act, at the request of the person who lodged the application.
- (2) The Tribunal may require a party to provide further information to the Tribunal in relation to a matter referred to the Tribunal.

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137. Adjournment of proceedings

- (1) The Tribunal may from time to time adjourn a proceeding to the times and places, and for the purposes, that it considers necessary.
- (2) The Registrar must cause a notice of the time and place to which a proceeding is adjourned to be served on a party to the proceeding who is not present or represented at the time when the proceeding is adjourned.

138. Presentation of cases

- (1) A party to a proceeding before the Tribunal may, with the approval of the Tribunal, be represented by a person of that party's choice.
- (2) Subject to subsection (3), a proceeding before the Tribunal is to be heard in private.
- (3) A proceeding before the Tribunal may be open to the public if all the parties to the proceeding agree.

139. Procedure

- (1) In a proceeding before the Tribunal, the proceeding is to be conducted with as little formality and technicality, and as quickly, as the requirements of this Act and a proper consideration of the matters to be resolved permit.

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- (2) Subject to this Act and the regulations, the Tribunal may determine its own procedure.

140. Burden of proof

In proceedings before the Tribunal –

- (a) the onus of proving an initial entitlement to a payment of compensation, or the payment of expenses, lies on the person claiming the entitlement; and
- (b) the onus of proving that a person is no longer entitled to a payment of compensation, or for the payment of expenses, lies on the Commissioner.

141. Evidence

- (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in the manner it thinks fit.
- (2) The referral of a dispute to the Tribunal is to be accompanied by all evidentiary material on which the Commissioner intends to rely at the hearing of the matter.
- (3) If the Commissioner fails to lodge evidentiary material under subsection (2), the Commissioner may not rely on that material unless the Tribunal otherwise allows.

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- (4) A party may not adduce evidence from a medical practitioner or other expert at a hearing unless –
 - (a) a report on, or proof of, the evidence from the expert on which the party intends to rely has been disclosed to the other parties to the hearing; or
 - (b) the Tribunal otherwise permits.
- (5) In a proceeding before the Tribunal –
 - (a) evidence may be taken on oath or affirmation; and
 - (b) subject to any lawful claim or right of privilege, the Tribunal, by notice in writing served on a person, may require that person to appear before it to give evidence and to produce the documents, books, and things (if any), that are specified in the notice; and
 - (c) evidence may be given orally or in writing.

142. Determination of medical question by Tribunal

- (1) If a medical question arises in any proceedings before the Tribunal, the Tribunal may –
 - (a) determine the medical question on any medical evidence presented to the Tribunal; or

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- (b) notify the Commissioner that the Tribunal requires the Commissioner to refer the medical question to a medical panel.
- (2) The Tribunal may only notify the Commissioner in accordance with subsection (1)(b) in relation to a medical question if –
 - (a) there is a conflict of medical opinion presented to the Tribunal in relation to the medical question between –
 - (i) a medical practitioner appointed by a person, other than the Commissioner, who has referred a matter to the Tribunal; and
 - (ii) a medical practitioner, a medical panel or an accredited impairment assessor to whom the question has been referred by the Commissioner or a medical panel; and
 - (b) one or more of the parties wishes the proceedings in which the medical question arises to continue.
- (3) If the Tribunal notifies the Commissioner in accordance with subsection (1)(b) that the Tribunal requires the Commissioner to refer the medical question to a medical panel –

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- (a) the Commissioner must refer the medical question to a medical panel under section 47; and
 - (b) the Commissioner must notify the Tribunal as soon as it receives from the medical panel notice of a determination under section 60(3)(a) in relation to the medical question.
- (4) The Tribunal is bound by the determination of a medical panel given under section 60(3)(a) in relation to a medical question referred to the medical panel by the Commissioner in accordance with subsection (1)(b).

143. Parties' right to be heard

- (1) Subject to this section, the matter to be resolved in a proceeding before the Tribunal is to be resolved by the Tribunal on the evidence placed before it after all parties have been given a reasonable opportunity to be heard.
- (2) Subject to this section, an order made by the Tribunal in relation to a proceeding is lawful and effectual whether or not all parties to the proceeding have presented their cases.
- (3) If –
 - (a) the matter to be resolved has been determined in the absence of a party to the relevant proceeding; and

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- (b) that party has, within 5 business days after the party receives notice of the order made by the Tribunal, applied to the Tribunal for a rehearing –

the Tribunal may order that the matter be reheard if it appears to it that it is just and reasonable to do so.

- (4) An order under subsection (3) is –
 - (a) to be subject to the terms and conditions, if any, specified by the Tribunal, including terms and conditions as to the payment of costs; or
 - (b) to be unconditional, if the Tribunal is satisfied that no substantial injustice will be caused to a party to the relevant proceeding.
- (5) On an order being made under subsection (3) for the rehearing of an application for referral –
 - (a) the Registrar must give notice to all parties to the relevant proceeding of the making of the order and of the time and place appointed for the rehearing; and
 - (b) the order of the Tribunal made on the first hearing ceases to have effect unless it is restored under subsection (6).
- (6) If the party on whose application the rehearing of an application for referral is ordered does not appear at the time and place appointed for the

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rehearing or any adjournment of the relevant proceeding, the Tribunal, if it thinks fit and without rehearing or further rehearing the application, may direct that the order made on the first hearing of the application be restored.

- (7) An order, made on the first hearing of an application, to which a direction under subsection (6) relates is restored to full force and effect and is to be taken to have been of effect at all times since the time it was made.

144. Right of Tribunal to state case

- (1) This section applies in relation to a matter in a proceeding before the Tribunal if, in the opinion of the Tribunal, the matter involves a question of law of such public and general importance as to make it desirable in the public interest that the matter should be determined by the Supreme Court.
- (2) If this section applies in relation to a matter in a proceeding before the Tribunal –
- (a) the Tribunal, instead of determining the matter, may prepare and state a case for the opinion of the Supreme Court; and
 - (b) the Tribunal may adjourn the hearing of the matter until a new date determined by the Tribunal after the Tribunal receives the opinion of the Supreme Court on the matter.

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- (3) If this section applies in relation to a matter in a proceeding before the Tribunal, the Tribunal must –
 - (a) immediately prepare and state a case –
 - (i) setting forth the material facts as found by the Tribunal; and
 - (ii) stating the question of law on which the Tribunal desires the opinion of the Supreme Court; and
 - (b) transmit the case without delay to the Registrar of the Supreme Court.
- (4) If the Registrar of the Supreme Court receives a case stated delivered to the Registrar under this section, the Registrar must –
 - (a) set the case down for hearing; and
 - (b) give the parties at least 5 business days' notice of the hearing.
- (5) On the hearing of a case stated, the Supreme Court –
 - (a) is to be constituted by a single judge; and
 - (b) may remit the case to the Tribunal for amendment if, in the Court's opinion, the case is defective; and
 - (c) may reserve the case or any point arising on the case for the Full Court; and

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- (d) is to cause the case to be remitted to the Tribunal with the opinion of the Court on the question submitted in the case.
- (6) The Full Court has power to hear and determine a case or point that is reserved for the Full Court under subsection (5)(c).

145. Records of proceedings

- (1) The Tribunal must cause to be made a recording, by mechanical or electronic or other means, of a proceeding before the Tribunal.
- (2) On the completion of a proceeding before the Tribunal, the Tribunal must cause the recording of the proceeding and any notes of the proceeding made by the Tribunal to be filed in the office of the Registrar in Hobart.
- (3) Any recording and notes of a proceeding filed in accordance with subsection (2) are to be kept for a period of 12 months from the completion of the proceeding or a longer period determined by the Tribunal.

146. Costs

- (1) Except as provided in section 143(4), costs are not to be awarded by the Tribunal against a party.

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- (2) The Tribunal may order a party to pay to the Tribunal the costs incurred by the Tribunal in dealing with a matter referred to the Tribunal, if the Tribunal is of the opinion that the party's conduct of the matter before the Tribunal is such that the awarding of the costs is appropriate so as to deter such conduct by the party in the future.

147. Contempt

- (1) A person must not –
- (a) wilfully misbehave at a proceeding before the Tribunal; or
 - (b) wilfully interrupt or obstruct such a proceeding; or
 - (c) assault or wilfully obstruct a person in attendance at such a proceeding; or
 - (d) without lawful excuse, disobey a lawful direction of the Tribunal given to that person during such a proceeding.

Penalty: Fine not exceeding 10 penalty units.

- (2) A person who has been served with a notice to attend a proceeding before the Tribunal must not, without reasonable excuse, neglect or fail to attend the proceeding in answer to the notice.

Penalty: Fine not exceeding 20 penalty units or a term of imprisonment of 6 months, or both.

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- (3) A person who has been called or examined as a witness at a proceeding before the Tribunal must not –
- (a) refuse to be sworn or to affirm at the proceeding; or
 - (b) refuse to answer any question; or
 - (c) refuse to produce a document, book, or article, that is specified in a notice served on the person.

Penalty: Fine not exceeding 20 penalty units or a term of imprisonment of 6 months, or both.

- (4) It is a defence to a charge of an offence against subsection (3) if the defendant establishes that he or she had a lawful claim or right of privilege that entitled him or her to refuse to take the action to which the offence relates.

148. Tribunal may make interim declaration

- (1) The Tribunal may make an interim determination, ruling or direction in respect of an application for referral made to it, if –
- (a) a delay by one party to the proceedings substantially prejudices another party to the proceedings; or
 - (b) a party fails to comply with a direction of the Tribunal; or

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- (c) the Tribunal is otherwise satisfied that the interests of justice require it.
- (2) If the Tribunal makes an interim determination, ruling or direction it must make an order that gives effect to that interim determination, ruling or direction.
- (3) It is not a requirement for the making of an interim order that the applicant might otherwise suffer serious or irreparable harm.
- (4) An order made under subsection (2) is to specify the period for which the interim determination, ruling or direction applies.
- (5) The Tribunal is not to make an order under subsection (2) in respect of the provision under Part 11 of a medical service within the meaning of section 116 unless it is satisfied that –
 - (a) the service is reasonably necessary –
 - (i) to prevent a deterioration in a person’s medical condition; or
 - (ii) to promote an early return to work; or
 - (iii) to relieve significant pain or discomfort; and
 - (b) the total cost of the service will not be more than \$5 000.
- (6) If an order is made under this section, the Registrar must, as soon as practicable after the

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order is made, arrange for a copy of the order to be served on all parties to the proceeding to which the order relates.

149. Orders

- (1) If the Tribunal makes a determination in respect of an application for referral made to it, the Tribunal is to make an order that gives effect to that determination.
- (2) The Tribunal may make a consent order in respect of a proceeding before it –
 - (a) on the written application of all the parties to the proceeding; and
 - (b) after considering the matters to be resolved in the proceeding and being satisfied that the parties properly understand those matters.
- (3) If the Tribunal makes an order in respect of an application for referral to it, other than a consent order under subsection (2), it is to provide a statement in writing of its reasons for making the determination to which the order relates.
- (4) An order made under subsection (1) is to direct that what is required to be done by the order is to be done within the time specified in the order.
- (5) If an order is made under this section, the Registrar, as soon as practicable after the order is

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made, must arrange to be served on all parties to the proceeding to which the order relates –

- (a) a copy of the order; and
- (b) if applicable, a copy of any statement provided by the Tribunal under subsection (3).

150. Tribunal may publish information relating to determination

- (1) The Tribunal may, in the form it thinks fit, publish copies of a determination made by it in relation to a matter under this Act, including any application, and may distribute the published copies to any persons it thinks fit.
- (2) The Tribunal may only publish a copy of a determination if the name of –
 - (a) the person who made the application to which the determination relates; and
 - (b) the person who has a compensable disease to whom the application relates –are not included in the copy.

151. Orders of Tribunal are final

- (1) Subject to section 152, an order made by the Tribunal is final and binding on all parties to the proceeding to which the order relates.

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- (2) Subject to subsection (3), nothing in subsection (1) prevents the Tribunal from –
 - (a) reconsidering any application for referral that has been determined by it; or
 - (b) varying or revoking an order previously made by it.
- (3) The Tribunal may not vary or revoke an order previously made by it if the variation or revocation will affect any amount paid, or any action taken, in accordance with that order.
- (4) Subject to section 152, no order or proceeding of the Tribunal with respect to an order –
 - (a) is vitiated by reason of any informality or want of form; or
 - (b) is liable to be challenged, appealed against, reviewed, quashed, or called into question by any court.

152. Right of appeal

- (1) A party to a proceeding before the Tribunal who is aggrieved by a determination, order, ruling, or direction, of the Tribunal may appeal to the Supreme Court on a question of law.
- (2) An appeal under this section is to be instituted, heard and determined in accordance with the provisions of the *Supreme Court Civil Procedure*

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Act 1932 and the Rules of Court made under that Act.

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Part 13 – Asbestos Compensation Commissioner

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**PART 13 – ASBESTOS COMPENSATION
COMMISSIONER**

153. Asbestos Compensation Commissioner

- (1) The Minister may appoint a person to be the Asbestos Compensation Commissioner.
- (2) The Commissioner –
 - (a) is a corporation sole; and
 - (b) has a seal; and
 - (c) may sue and be sued in his or her corporate name.
- (3) The seal is to be kept and used as authorised by the Commissioner.
- (4) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Commissioner.
- (5) All courts and persons acting judicially are to take judicial notice of –
 - (a) the official signature of a person who is or has been the Commissioner; and
 - (b) the fact that the person holds or has held the office of Commissioner.
- (6) Schedule 2 has effect in relation to the Commissioner.

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Part 13 – Asbestos Compensation Commissioner

154. Functions of Commissioner

In addition to any other functions imposed on it under this Act, the Commissioner has the following functions:

- (a) to manage, and administer, the investments of the Fund;
- (b) to advise the Minister on any matter relating to this Act that the Minister refers to the Commissioner or that the Commissioner considers may affect the operation of this Act;
- (c) to provide to the department responsible to the Minister in relation to the administration of this Act any information, available to the Commissioner, that the Secretary of the Department requests the Commissioner to provide for the purpose of enabling the determination of policy in relation to compensation for asbestos-related diseases and related matters;
- (d) any other functions that are prescribed.

155. Powers of Commissioner

- (1) The Commissioner may do all things necessary and convenient to be done for or in connection with, or incidental to, the performance of his or her functions under this Act or any other Act.

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- (2) The generality of subsection (1) is not to be taken to be limited by any other provision of this Act conferring a power on the Commissioner.

156. Minister may give Commissioner directions

- (1) The Minister may give a direction in writing to the Commissioner with respect to the performance of the Commissioner's functions and the exercise of the Commissioner's powers under this or any other Act.
- (2) The Commissioner is to publish in the Commissioner's next annual report under section 159 a written direction given to the Commissioner under subsection (1).
- (3) Within 15 business days after receiving a direction under subsection (1), the Commissioner may object to the direction on any ground.
- (4) An objection is to –
- (a) be in writing; and
 - (b) specify the grounds for the objection; and
 - (c) be provided to the Minister.
- (5) If, after receiving an objection, the Minister determines that a direction is not to be withdrawn or amended, the Minister must cause a copy of the direction and the objection to be

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laid before each House of Parliament within 10 sitting-days of receiving the objection.

- (6) The Commissioner must perform his or her functions and exercise his or her powers in a manner that is consistent with a direction if –
- (a) the Commissioner has not objected to the direction within the period specified in subsection (3); or
 - (b) the Commissioner has objected to the direction and the direction has been tabled in both Houses of Parliament; or
 - (c) the Commissioner has withdrawn his or her objection.

157. Delegation by Commissioner

- (1) The Commissioner, by instrument in writing under his or her common seal, may delegate to a person specified in the instrument the performance or exercise of those functions and powers of the Commissioner (other than this power of delegation), under this Act or any other Act, that are specified in the instrument.
- (2) The Commissioner, by instrument in writing under his or her common seal, may revoke wholly or in part any delegation made under subsection (1).
- (3) A function or power the performance or exercise of which has been delegated under this section

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may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

- (4) A delegation under this section may be made subject to the conditions or limitations, if any, as to –
- (a) the performance or exercise of any of the functions or powers delegated; or
 - (b) time or circumstance –
- that are specified in the instrument.
- (5) Despite any delegation under this section, the Commissioner may continue to perform or exercise all or any of the functions or powers delegated.
- (6) Any act or thing done by, or to, a delegate of the Commissioner while the delegate is acting in the exercise of a delegation under this section –
- (a) has the same force and effect as if the act or thing had been done by, or to, the Commissioner, as the case may be; and
 - (b) is to be taken to have been done by, or to, the Commissioner, as the case may be.
- (7) An instrument purporting to be signed by a delegate of the Commissioner in his or her capacity as a delegate of the Commissioner –
- (a) is, in all courts and before all persons acting judicially, to be received in

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evidence as if it were an instrument executed by the Commissioner under seal; and

- (b) is to be taken, until the contrary is proved, to be an instrument signed by a delegate of the Commissioner under this section.
- (8) If the exercise of a power by the Commissioner is dependent on the opinion or belief of the Commissioner, a delegate of the Commissioner under this section may, in exercising that power, act on his own or her opinion or belief.

158. Secretary to, and staff of, Commissioner

- (1) The Commissioner may, with the approval of the Head of a State Service Agency, appoint a State Service officer or State Service employee employed in that Agency to be the Secretary to the Commissioner and that officer or employee may hold that office in conjunction with State Service employment.
- (2) The Commissioner may make arrangements with the Head of a State Service Agency for the State Service officers and State Service employees employed in that Agency that may be necessary to be made available to the Commissioner to enable the Commissioner to perform his or her functions under this Act.

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- (3) Officers and employees made available to the Commissioner under subsection (2) may, in conjunction with State Service employment, serve the Commissioner in any capacity.

159. Annual report

- (1) The Commissioner must, not later than 31 October after the end of each financial year, submit to the Minister, in relation to that financial year, a report of the Commissioner's operations.
- (2) The Minister must cause a copy of the report referred to in subsection (1) to be laid on the table of each House of Parliament within the first 15 sitting-days of the House after the report is received by the Minister.

160. Financial statements

- (1) The Commissioner is to keep accounts and records of the Commissioner's financial affairs.
- (2) Within 45 days after the end of each financial year, the Commissioner is to –
 - (a) prepare the financial statements of the Commissioner relating to that financial year; and
 - (b) provide them to the Auditor-General.

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Part 13 – Asbestos Compensation Commissioner

- (3) The financial statements are to be in accordance with the Australian Accounting Standards.

161. Commissioner to keep applicants informed

The Commissioner must take all reasonable steps to ensure that a person who has lodged an application or request with the Commissioner is informed of the progress of the application or request as soon as practicable after the person makes an inquiry in relation to the application or request.

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PART 14 – COMPENSATION FUND

162. Asbestos Compensation Fund

- (1) The Commissioner is to establish and maintain a fund to be called the Asbestos Compensation Fund.
- (2) The Commissioner is to administer the Fund.
- (3) The following are to be paid into the Fund:
 - (a) all levies collected under this Act;
 - (b) any amounts that are allocated to the Fund from Consolidated Revenue;
 - (c) any gifts or donations to the Fund;
 - (d) all money recovered by the Commissioner;
 - (e) any interest and earnings on the balance of the Fund.
- (4) There may be paid out of the Fund –
 - (a) amounts that have been determined under this Act to be payable by the Commissioner as compensation under this Act; and
 - (b) amounts that have been determined under this Act to be payable by the Commissioner for expenses of the kind referred to in Part 11; and

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- (c) any amounts for the costs of an examination, or test, conducted by a medical practitioner, or an accredited impairment assessor, to whom a medical question is referred under this Act and any analysis required to be conducted as a result of the examination or test; and
 - (d) the costs and expenses incurred by the Commissioner in the administration of, or for the purposes of, this Act or the performance or exercise of the Commissioner's functions or powers; and
 - (e) the expenses incurred by or in relation to a medical panel; and
 - (f) any amount required for a refund of the levy; and
 - (g) any remuneration payable under this Act; and
 - (h) any other amount specified in this Act as being required to be paid out of the Fund.
- (5) For the purposes of this section, the Commissioner, with the approval of the Treasurer, may open and maintain with an authorised deposit-taking institution one or more accounts in the name of the Commissioner.
- (6) The Commissioner may borrow money, from sources and on terms and conditions approved by the Treasurer, if –

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- (a) it is necessary to do so to meet the liabilities, or anticipated future liabilities, of the Commissioner; and
- (b) the Commissioner is authorised to do so by the Treasurer.

163. Nominal Insurer to pay into Fund amounts from HIH funds

(1) In this section –

“Nominal Insurer” means the Nominal Insurer established under the *Workers Rehabilitation and Compensation Act 1988*;

“Special Account” means the Special Account in the Nominal Insurer Fund established under section 127B of the *Workers Rehabilitation and Compensation Act 1988*.

- (2) As soon as practicable after the commencement day, the Nominal Insurer is to pay into the Fund the amounts standing to the credit of the Special Account in the Nominal Insurer Fund on the commencement day, less \$100 000.
- (3) If the Nominal Insurer is not able to pay into the Fund an amount that is, on the commencement day, standing to the credit of the Special Account in the Nominal Insurer Fund because the amount may not be withdrawn immediately

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by the Nominal Insurer from an account or investment, the Nominal Insurer is to pay the amount into the Fund as soon as practicable after the amount may be so withdrawn.

164. Minister may give directions in relation to Fund

- (1) The Commissioner may, in writing, request the Minister for directions in relation to an amount in the Fund that is, in the opinion of the Commissioner, in excess of the amount required for the purposes for which the Fund is established.
- (2) The Minister may, in writing, after receiving under subsection (1) a request in relation to an amount, direct the Commissioner under section 156 as to how the Commissioner is to deal with the amount.
- (3) A direction under section 156 in accordance with subsection (2) in relation to an amount referred to in a request under subsection (1) may require the Commissioner to –
 - (a) retain in the Fund the amount or a part of the amount; or
 - (b) pay the amount, or part of the amount, for –
 - (i) the promotion of workplace safety in relation to asbestos; or

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- (ii) purposes that are, in the opinion of the Minister, related to the objects of this Act.

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Part 15 – Levy

PART 15 – LEVY

165. Interpretation of Part 15

(1) In this Part –

“levy amount” means –

- (a) in relation to a policyholder, the amount the policyholder is required to pay under section 167(1); and
- (b) in relation to a self-insurer, the amount the self-insurer is required to pay under section 167(2);

“notional premium” has the same meaning as it has in section 144(1) of the *Workers Rehabilitation and Compensation Act 1988*.

(2) For the purposes of this Part –

- (a) each State Service Agency or other body to which the Tasmanian Risk Management Fund applies; and
- (b) any statutory authority, within the meaning of the *Government Business Enterprises Act 1995*, that is specified in Part 1 of Schedule 1 to that Act, other than such an authority that is a self-insurer –

is taken to be a policyholder.

166. Determination of levy

- (1) The Minister, by notice not later than 31 March in each year, may determine the levy for the following financial year.
- (2) The levy is to be expressed as a percentage amount.
- (3) For the purposes of the financial year in which this section commences, the Minister is to be taken to have made a determination under subsection (1) that the levy is 4%.
- (4) In determining the amount of a levy for a financial year, the Minister is to take into account –
 - (a) the expected degree of payments and other expenses the Commissioner will be required to pay in the financial year; and
 - (b) the amount of any other money that is expected to be received by the Commissioner in the financial year; and
 - (c) the period during which payment of the levy is likely to be required; and
 - (d) any deficit or surplus projected to occur at the end of the financial year; and
 - (e) any other matters that are prescribed.

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167. Policyholders and self-insurers liable to pay levy

- (1) If the Minister has determined under section 166(1) a levy in relation to a financial year, each policyholder is required to pay, in accordance with section 168, the percentage, specified in the determination of the levy under section 166(1), of the premium payable by the policyholder for policies of insurance under the *Workers Rehabilitation and Compensation Act 1988* in the financial year.
- (2) If the Minister has determined under section 166(1) a levy in relation to a financial year, each self-insurer is required to pay, in accordance with section 169, the percentage, specified in the determination of the levy under section 166(1), of the notional premium payable by a self-insurer under the *Workers Rehabilitation and Compensation Act 1988* in the financial year.

168. Levy amounts to be paid by policyholder to insurer

- (1) If the Minister determines a levy under section 166(1) in relation to a financial year, each policyholder is to pay an amount equal to the levy amount to a licensed insurer with whom the policyholder is maintaining a policy of insurance that commences –
 - (a) on the day on which the determination takes effect; or

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- (b) during the period for which the determination has effect.

- (2) A policyholder is to pay the levy amount referred to in subsection (1) to the licensed insurer with whom the policy of insurance is maintained not later than the day on which the premium in respect of the policy is required to be paid.

Penalty: Fine not exceeding 20 penalty units.

- (3) A licensed insurer, within 20 business days after the end of each month, is to –
 - (a) pay to the Commissioner all amounts received under subsection (1) or (4) during that month; and
 - (b) forward to the Commissioner a statement in writing –
 - (i) setting out the levy amounts received in respect of policies of insurance during that month; and
 - (ii) setting out the levy amounts due during that month but not paid; and
 - (iii) setting out any other particulars that are required by the Commissioner; and

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- (iv) verified by a statutory declaration made by an officer of the licensed insurer.

Penalty: Fine not exceeding 20 penalty units.

- (4) If a policyholder is required to pay an additional premium as a result of an adjustment of the policy of insurance, the policyholder must pay to the licensed insurer with whom the policy is maintained the percentage, specified in the determination of the levy under section 166(1) for the financial year in which the policy commenced, of the additional premium payable, not later than the day on which the additional premium in respect of the policy is required to be paid.

Penalty: Fine not exceeding 20 penalty units.

169. Levy amounts to be paid by self-insurer to Commissioner

- (1) If the Minister determines a levy under section 166(1), each self-insurer is to pay to the Commissioner, during the period for which the determination has effect, the levy amount –
 - (a) in the case of a self-insurer referred to in subsection (2), on the day on which the determination takes effect; or

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- (b) in the case of a self-insurer referred to in subsection (3), on the day on which the permit is granted.
- (2) A self-insurer who is granted a self-insurer permit under the *Workers Rehabilitation and Compensation Act 1988* before the day on which a determination under section 166(1) took effect is to pay the levy to the Commissioner within 20 business days of the day on which the determination takes effect.

Penalty: Fine not exceeding 20 penalty units.

- (3) A self-insurer who is granted a self-insurer permit under the *Workers Rehabilitation and Compensation Act 1988* after the day on which a determination under section 166(1) took effect is to pay the levy to the Commissioner within 20 business days of the day on which the permit is granted.

Penalty: Fine not exceeding 20 penalty units.

- (4) Despite subsections (2) and (3), in the case of a determination of a levy under section 166(1) by virtue of section 166(3), the levy amount is payable under subsections (2) and (3) 90 days after the day on which, under subsections (2) and (3), as the case may be, the levy would otherwise be payable.

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170. Convictions for offences relating to levy

- (1) If a policyholder, licensed insurer or self-insurer is convicted of an offence under this Part by a court, the court, in addition to imposing a penalty for the offence, is to order the person to pay to the Commissioner –
 - (a) the sum in respect of the non-payment of which the offence was committed; or
 - (b) the portion of that sum that remains unpaid at the date of the conviction.
- (2) An order under subsection (1) for the payment of a sum to the Commissioner may be enforced in the same manner as a summary conviction or order under the *Justices Act 1959* for the payment of a sum of money may be enforced, and the provisions of that Act, with the necessary adaptations, apply to such an order accordingly.

171. Refunds of levy amounts

- (1) If a policyholder is entitled to receive from a licensed insurer a refund of an amount paid by way of premium in respect of a policyholder's policy, the licensed insurer, in addition to any amount paid to the policyholder by way of refund of premium, is to pay to the policyholder, by way of refund of the relevant amount paid by the policyholder under section 168, an amount

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that represents a proportionate part of that relevant amount.

- (2) If a self-insurer would, if it had been a policyholder, have been entitled to a refund of an amount paid by way of premium in respect of a policy of insurance –
 - (a) the self-insurer is entitled to a refund of the amount that represents a proportionate part of the relevant amount paid by it; and
 - (b) the Commissioner is to pay that amount to the self-insurer.
- (3) If a licensed insurer pays to a policyholder an amount by way of refund of a relevant amount, the Commissioner, on application by the licensed insurer, is to pay to the licensed insurer an amount equal to the amount so paid by the licensed insurer.

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PART 16 – MISCELLANEOUS

Division 1 – Recovery of amounts paid under Act

172. Interpretation of this Division

(1) For the purposes of this Division –

“asbestos product” means a product containing asbestos fibre and includes, but is not limited to including, cement, paper, millboard and paint, but does not include a secondary asbestos product;

“secondary asbestos product” means a product, manufactured by a person, that consists in whole or in part of an asbestos product and includes, but is not limited to including –

(a) building materials, pressure or sewerage pipes; and

(b) roofing felts, clutch facings, brakes or gaskets –

but does not include a building or other structure.

(2) For the purposes of this Division, the relevant asbestos product in respect of a person who has a compensable disease is the particular asbestos product to which the person was exposed in the course of the person’s employment as a worker

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during a period in which the person's employment is connected with this State.

- (3) For the purposes of this Division, a person is a culpable manufacturer in respect of a person who has a compensable disease if the first-mentioned person –
 - (a) manufactured the relevant asbestos product in respect of the person who has a compensable disease; and
 - (b) knew, at the time of manufacturing the relevant asbestos product, that asbestos was dangerous to human health or ought reasonably be expected to have known, at the time of manufacturing the relevant asbestos product, that asbestos was dangerous to human health.

- (4) For the purposes of this Division, a person is a culpable manufacturer in respect of a person who has a compensable disease if the first-mentioned person –
 - (a) manufactured a secondary asbestos product that contained the relevant asbestos product in respect of the person who has a compensable disease; and
 - (b) knew, at the time of manufacturing the secondary asbestos product, that the product contained asbestos or ought reasonably be expected to have known, at the time of manufacturing the secondary

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asbestos product, that the product contained asbestos; and

- (c) knew, at the time of manufacturing the secondary asbestos product, that asbestos was dangerous to human health or ought reasonably be expected to have known, at the time of manufacturing the secondary asbestos product, that asbestos was dangerous to human health.

- (5) For the purposes of this Division, a culpable supplier in respect of a person who has a compensable disease is a person –

- (a) who supplied an asbestos product that is the relevant asbestos product, or a secondary asbestos product containing the relevant asbestos product, to another person; and

- (b) who –

- (i) knew, at the time of supplying that product to the other person referred to in paragraph (a), that the product contained asbestos; or

- (ii) ought reasonably be expected to have known, at the time of supplying that product to the other person referred to in paragraph (a), that the product contained asbestos; and

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- (c) who knew at the time of the supply referred to in paragraph (b), or ought reasonably be expected to have known at the time of the supply referred to in paragraph (b), that asbestos was dangerous to human health.
- (6) For the purposes of this Division, the relevant amounts in relation to a person who has a compensable disease are –
- (a) an amount, or amounts, paid under this Act by the Commissioner as compensation to the person or a member of the family of the person; and
 - (b) an amount, or amounts, paid as expenses under Part 11 in relation to the person who has a compensable disease; and
 - (c) any legal or administrative costs incurred by the Commissioner in determining an application under this Act that relates to the person who has a compensable disease.

173. Commissioner may seek to recover certain amounts from culpable manufacturers and suppliers

- (1) This section applies in relation to a person who has a compensable disease if the Commissioner has paid any compensation under this Act in relation to the person or a member of the family of the person.

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- (2) If this section applies in relation to a person who has a compensable disease, the Commissioner may, in a court of competent jurisdiction, recover from a culpable manufacturer in relation to the person, or a culpable supplier in relation to the person, the relevant amounts in relation to the person.
- (3) The Commissioner may not recover under this section all or part of a relevant amount in relation to a person who has a compensable disease if an order has been made under this section that another person is required to pay to the Commissioner the relevant amount.
- (4) The Commissioner, before attempting to recover under this section the relevant amounts in relation to a person who has a compensable disease, is to consider whether –
 - (a) the action to recover the amount is likely to be successful and, if so, whether the amount that may be recovered justifies taking the action; and
 - (b) it is in the public interest to take the action by virtue of the conduct of the culpable manufacturer or culpable supplier, as the case may be.
- (5) For the purposes of this section, an amount is taken to be a relevant amount in relation to a person and to have been paid by the Commissioner if the Commissioner lodges, with the court in which the claim for recovery of the

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amount is made, a copy of a record, made by the Commissioner, of the payment by the Commissioner of the amount in relation to the person.

- (6) The payment by the Commissioner of all or part of a relevant amount in relation to a person may not be challenged by a person from whom the Commissioner seeks to recover an amount under this section.
- (7) The Commissioner is not required to discover a document, or a class of documents, in relation to a claim for an amount under this section, except in accordance with an order of the court with which the claim for recovery is lodged.
- (8) If a claim is made by the Commissioner under this section for recovery, of a relevant amount in relation to a person who has a compensable disease, from a person –
 - (a) the person may apply to the court to have another person joined as a party to the proceedings in relation to the claim; and
 - (b) a court may determine that one or more of those persons who are joined as a party and who are a culpable manufacturer or culpable supplier in relation to the relevant asbestos product are jointly and severally liable to pay the amount in the proportions that the court considers represent the relative liability of the persons.

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- (9) A judgment made by a court that an amount is payable by a person pursuant to this section is to be registered with, and is enforceable as an order of, the Supreme Court.

Division 2 – Other matters

174. Enactments relating to limitation of actions do not apply

No enactment relating to the limitation of actions applies, or is to be taken to have applied, to any proceedings by a person under this Act.

175. Liability of persons performing functions under this Act

- (1) This section applies to the following persons:
- (a) the Commissioner or a delegate of the Commissioner;
 - (b) the Secretary to the Commissioner and any member of the staff of the Commissioner;
 - (c) the Chief Commissioner of the Tribunal;
 - (d) a Commissioner of the Tribunal;
 - (e) a part-time Commissioner of the Tribunal;
 - (f) the Registrar;

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- (g) a Deputy Registrar of the Tribunal;
 - (h) a medical professional.
- (2) No liability attaches to a person to whom this section applies for an act or omission by the person in good faith and in the exercise or purported exercise of a power or in the performance or discharge, or purported performance or discharge, of a function or duty under this Act of the person or the Tribunal or medical panel of which the person is a member.

176. Persons not to overcharge for services the Commissioner is required to pay as expenses

A person who provides any services of the kind referred to in Part 11 to another person, knowing that the Commissioner may be required to pay the expenses, must not charge a fee in excess of –

- (a) the fee prescribed, in relation to those services, under the *Workers Rehabilitation and Compensation Act 1988* for the purposes of section 75(2A) of that Act; or
- (b) if no fee is prescribed, in relation to those services, under that section, the fee that the person would normally charge (taking into account any discount that would normally be applicable) for those services if those services were provided

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for a matter not connected with a claim to the Commissioner to pay such expenses.

Penalty: Fine not exceeding 100 penalty units.

177. Recovery of compensation, or expenses, that have been overpaid

If a person has received an amount as compensation or expenses under this Act that is more than the amount to which the person is entitled under this Act, the Commissioner –

- (a) may recover from the person, as a debt due and payable, an amount equal to the difference between the amount the person received and the amount to which he or she was entitled under this Act; or
- (b) may deduct from any money that may become payable to the person by the Commissioner an amount equal to the difference between the amount the person received and the amount to which he or she was entitled under this Act.

178. False or misleading statements

- (1) A medical practitioner or accredited impairment assessor must not provide to the Commissioner, or to a person who has made or subsequently makes an application for compensation, a

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medical certificate that contains any information that, to the practitioner's or assessor's knowledge, is false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not, in making any application under this Act or providing any particulars or information under this Act, make, or cause to be made, a statement or representation that to the person's knowledge is false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units.

179. Commissioner may obtain information

- (1) The Commissioner may, by notice in writing served on a person, require the person to provide to the Commissioner, within the period specified in the notice, the information –
- (a) that the Commissioner specifies in the notice; and
 - (b) that is reasonably required by the Commissioner to enable him or her to carry out the Commissioner's functions.
- (2) A person who is required by a notice under subsection (1) to provide information to the Commissioner must not fail, without reasonable excuse, to provide the information to the

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Commissioner within the period specified in the notice.

Penalty: Fine not exceeding 20 penalty units.

180. Medical certificates to be in approved form

For the purposes of this Act, a medical certificate given by a medical practitioner is to be in the approved form, unless it was given by a medical practitioner before the commencement day.

181. Reliance on reports of medical panel or medical practitioner

- (1) A report by a medical panel in relation to a medical question in respect of a person who has an asbestos-related disease may not be used –
 - (a) by the Commissioner in relation to the determination of an application under this Act unless a copy of the report is served on the person who made the application; or
 - (b) by a party in proceedings before the Tribunal or a court unless a copy of the report is served on each other party to the proceedings.
- (2) A report by a medical practitioner, including an accredited impairment assessor, in respect of a

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person who has an asbestos-related disease may not be used by a party as evidence in proceedings before the Tribunal or a court unless a copy of the report is served on each other party to the proceedings.

- (3) A medical certificate given by a medical practitioner, including an accredited impairment assessor, in respect of a person who has an asbestos-related disease may not be used –
- (a) by the Commissioner in relation to the determination of an application under this Act, unless a copy of the certificate is served on the person who made the application; or
 - (b) by a party in proceedings before the Tribunal or a court, unless a copy of the certificate is served on each other party to the proceedings.

182. Receipt by minor is valid discharge

The receipt of a person, who has not attained the age of 18 years and to whom any money is payable by way of compensation or otherwise under this Act, is a good and valid discharge for the payment of that money even though the person is a minor.

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183. Maintenance of secrecy

- (1) A person must not disclose any information obtained by the person in the exercise of any powers, or the performance of any functions, imposed or conferred on the person by this Act, or by virtue of the person's office under this Act, unless the disclosure –
- (a) is authorised by each person to whom the information relates; or
 - (b) occurs in the exercise or performance of the powers or functions of the person; or
 - (c) occurs in the exercise or performance of the powers or functions that have been delegated to the person, or which the person is authorised to perform, under this Act; or
 - (d) is authorised under this Act; or
 - (e) is for the purposes of, or is authorised under, another Act or a law; or
 - (f) occurs in pursuance of a requirement imposed by or under another Act or a law.

Penalty: Fine not exceeding 5 penalty units.

- (2) Without limiting the circumstances in which a disclosure is authorised under this Act, information may be disclosed by a person who is

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authorised by or under this Act to obtain the information, if the disclosure is to a person –

- (a) for the purpose of enabling the person to conduct study or research that is approved by the Commissioner; or
- (b) for the purpose of the collection and analysis of statistical information; or
- (c) acting on behalf of a body performing functions similar in whole or in part to the functions of the Commissioner, if the disclosure is authorised by the Commissioner; or
- (d) for law enforcement purposes.

184. Time limits for actions taken by Commissioner, &c.

(1) In this section –

“relevant person” means –

- (a) the Commissioner; or
- (b) the Tribunal, the Chief Commissioner of the Tribunal, a Commissioner of the Tribunal or part-time Commissioner of the Tribunal, the Registrar and a Deputy Registrar; or
- (c) a medical professional; or

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- (d) any other prescribed person.
- (2) Despite the requirements of any other provision of this Act, a provision specifying the period in which an action is to be taken by a relevant person does not apply in relation to the person for the period of 12 months after the commencement day.

185. Role of WorkCover Board

- (1) In this section –
 - “**Board**” means the WorkCover Board established under the *Workers Rehabilitation and Compensation Act 1988*.
- (2) The Board is to –
 - (a) monitor and report to the Minister on the operation and effectiveness of this Act and of the performance of the systems to which this Act relates; and
 - (b) collect and publish statistics on any matter it considers necessary or relevant to the administration of this Act.
- (3) The Board is to advise the Minister on any matter relating to this Act that the Minister refers to the Board.

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186. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for or with respect to –
 - (a) the practices and procedures to be adopted by the Tribunal, the Commissioner or a medical panel; and
 - (b) the powers that may be exercised, and the functions that are required to be performed, by the Registrar under this Act.
- (3) Regulations under this section may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.
- (4) Regulations under this section may –
 - (a) provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations; and
 - (b) provide in respect of any such offence for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not

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exceeding one penalty unit for each day during which the offence continues.

- (5) The regulations may provide for the charging of fees in respect of any thing done under or for the purposes of this Act.

187. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Workplace Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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**SCHEDULE 1 – COMPENSATION PAYABLE TO
FAMILY MEMBERS**

Section 31(2), section 98 and section 112(4)

PART 1 – INTERPRETATION

1. Interpretation

(1) In this section –

“deceased person” means a person who has a compensable disease and who has died.

(2) For the purposes of this Schedule, a person ceases to be a surviving child of a deceased person if the person attains the age of 22 years before the death of the deceased person.

(3) For the purposes of this Schedule, a person survives a deceased person only if the first-mentioned person is alive at the time a determination under section 70(4)(a) is made of the amount payable under this Act to members of the family of the person who has a compensable disease.

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**PART 2 – WHERE PERSON SURVIVED BY CHILD
BUT THERE IS NO SURVIVING SPOUSE**

1. Where person only survived by one child

If the deceased person is not survived by a spouse but is survived by only one child of the deceased person, the child is entitled to all of the amount of the lump sum referred to in section 98.

2. Where person survived only by more than one child

If the deceased person is not survived by a spouse but is survived by more than one child of the deceased person, the amount of the lump sum referred to in section 98 is to be divided equally between the children.

**PART 3 – WHERE PERSON SURVIVED BY ONLY ONE
SPOUSE**

1. If person survived by only one spouse and has no children

If the deceased person is survived by only one spouse and there are no surviving children of the deceased person, the spouse is entitled to all of the amount of the lump sum referred to in section 98.

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2. If person survived by only one spouse and only by children of the person and the spouse

- (1) This clause applies if –
 - (a) the deceased person is survived by only one spouse; and
 - (b) there are surviving children of the deceased person who are also children of the surviving spouse; and
 - (c) there are no surviving children of the deceased person who are not also children of the spouse.
- (2) If this clause applies, the amount of the lump sum referred to in section 98 is to be paid to the surviving spouse.

3. If person survived by only one spouse and at least one of the person's children is not also a child of the spouse

- (1) This clause applies if –
 - (a) the deceased person is survived by only one spouse; and
 - (b) there is at least one surviving child of the deceased person who is not also a child of the surviving spouse (whether or not there is one or more surviving children of the deceased person who are also children of the surviving spouse).

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- (2) If this clause applies, the amount of the lump sum referred to in section 98 is to be divided equally into 2 parts –
 - (a) one of which is to be provided to the surviving spouse; and
 - (b) the other part of which is to be divided equally between all surviving children of the deceased person.

**PART 4 – WHERE PERSON SURVIVED BY MORE
THAN ONE SPOUSE**

1. If person survived by more than one spouse and no children

If the deceased person is survived by more than one spouse and there are no surviving children of the person, the amount of the lump sum referred to in section 98 is to be divided equally between the surviving spouses.

2. If person survived by more than one spouse and children

- (1) This clause applies if –
 - (a) the deceased person is survived by more than one spouse; and
 - (b) there is one or more surviving children of the deceased person (whether or not the

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children are also children of a surviving spouse).

- (2) If this clause applies, the amount of the lump sum referred to in section 98 is to be divided equally into 2 parts –
 - (a) one of which is to be divided equally between all the surviving spouses; and
 - (b) the other part of which is to be divided equally between all surviving children of the deceased person.

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**SCHEDULE 2 – ASBESTOS COMPENSATION
COMMISSIONER**

Section 153

1. Terms of office

- (1) The Commissioner may be appointed for a term of not more than 3 years that is specified in his or her instrument of appointment.
- (2) A person who has been the Commissioner may be reappointed.

2. Provisions requiring devotion to other duties

A provision, by or under any Act, that requires the holder of an office to devote the whole of his or her time to the duties of the office does not disqualify the person from holding that office and also the office of Commissioner.

3. Remuneration

- (1) Subject to subclause (2), the Commissioner is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine.
- (2) A Commissioner who is –
 - (a) a State Service officer or State Service employee; or

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(b) otherwise holding, or acting in, an office –

(i) under the *State Service Act 2000*;
or

(ii) in an Agency within the meaning of that Act –

is not entitled to remuneration under subclause (1), except with the approval of the Minister administering that Act.

4. *State Service Act 2000 not to apply*

(1) The *State Service Act 2000* does not apply to, or in respect of, the appointment of the Commissioner.

(2) The Commissioner is not, in his or her capacity as the Commissioner, subject to the *State Service Act 2000* during his or her term of office.

5. Deputies

(1) The Minister may appoint any person to act in the office of the Commissioner while the Commissioner is absent from his or her office through illness or any other cause.

(2) Without limiting the generality of subclause (1), the Commissioner is to be taken to be absent from

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his or her office for the purposes of that subclause if there is a vacancy in that office.

- (3) A thing done or omitted to be done by a person while acting in the office of the Commissioner is as valid, and has the same consequence, as if it had been done or omitted to be done by the Commissioner, whether or not the occasion requiring or authorising the person to act in the Commissioner's place had arisen.

6. Vacation of office

- (1) The Commissioner is to be taken to have vacated his or her office –
- (a) if the Commissioner dies; or
 - (b) if the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration or estate for their benefit; or
 - (c) if the Commissioner becomes unable to perform competently the duties of the office; or
 - (d) if the Commissioner is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months, or if

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he or she is convicted outside Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable; or

(e) if the Commissioner is convicted of an offence against this Act; or

(f) if the Commissioner resigns his or her office by writing under his or her hand addressed to the Minister and the Minister accepts the resignation; or

(g) if the Commissioner is removed from office by the Minister under subclause (2).

(2) The Minister may remove from office the Commissioner if the Minister is satisfied that the Commissioner is unable to perform adequately the duties of his or her office.

(3) The Commissioner may not be removed from office otherwise than in accordance with this clause.

7. Validity of proceedings, &c.

(1) No act or proceeding of the Commissioner or any person acting under any direction of the Commissioner is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or

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commenced, there was a vacancy in the office of the Commissioner.

- (2) All acts and proceedings of the Commissioner or of any person acting under any direction of the Commissioner are, despite –
- (a) the subsequent discovery of any defect in the appointment of the Commissioner; or
 - (b) that any person was disqualified from acting as, or incapable of being, the Commissioner –

as valid as if the Commissioner had been duly appointed and was qualified to act, or capable of being, the Commissioner.

- (3) If the Commissioner, or any person acting under any direction of the Commissioner, does or purports to do, or omits or purports to omit to do, any act or thing in good faith for the purpose of administering or executing this Act, he or she is not personally subject to any action, liability, claim or demand in respect of that act or omission.

8. Presumptions

In any proceedings by or against the Commissioner, unless evidence is given to the contrary, no proof is required of the appointment of the Commissioner.

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9. Commissioner to be taken to be worker

The Commissioner is to be taken to be a worker employed by the Crown for the purposes of this Act.