

TASMANIA

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

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

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

A BILL FOR

An Act to amend certain legislation consequent on the enactment of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* and to make certain other minor amendments to legislation so amended

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 (Consequential Amendments) Act 2011*.

2. Commencement

This Act commences on the day on which section 29 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* commences.

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

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

s. 3

Part 2 – Ambulance Service Act 1982 Amended

**PART 2 – AMBULANCE SERVICE ACT 1982
AMENDED**

3. Principal Act

In this Part, the *Ambulance Service Act 1982** is referred to as the Principal Act.

4. Section 36 amended (Fees for ambulance services)

Section 36(1) of the Principal Act is amended by inserting “the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*,” after “*Workers Rehabilitation and Compensation Act 1988*,”.

*No. 105 of 1982

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 3 – Appeal Costs Fund Act 1968 Amended

s. 5

PART 3 – APPEAL COSTS FUND ACT 1968 AMENDED

5. Principal Act

In this Part, the *Appeal Costs Fund Act 1968** is referred to as the Principal Act.

6. Section 5B inserted

After section 5A of the Principal Act, the following section is inserted:

5B. Annual statement by Registrar of Asbestos Compensation Tribunal

- (1) The Registrar of the Asbestos Compensation Tribunal established under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* must, not later than 31 July in each year, give to the Asbestos Compensation Commissioner appointed under that Act a statement specifying the number of applications for referral made under that Act to the Tribunal during the previous financial year.
- (2) The Asbestos Compensation Commissioner must, not later than 31 August in each year –

*No. 57 of 1968

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 6

Part 3 – Appeal Costs Fund Act 1968 Amended

- (a) give to the Registrar a copy of the statement received by the Commissioner under subsection (1); and
 - (b) pay to the Registrar the prescribed amount.
- (3) For the purposes of subsection (2), the prescribed amount is an amount calculated by multiplying the number of applications for referral made under that Act to the Tribunal by the fee prescribed in regulations made under this Act on the filing of a plaint in a court of requests.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 4 – Civil Liability Act 2002 Amended

s. 7

PART 4 – CIVIL LIABILITY ACT 2002 AMENDED

7. Principal Act

In this Part, the *Civil Liability Act 2002** is referred to as the Principal Act.

8. Section 3B amended (Civil liability excluded from Act)

Section 3B(4) of the Principal Act is amended by inserting “the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*,” after “*Workers Rehabilitation and Compensation Act 1988*,”.

9. Section 43A amended (Application of Part 9A)

Section 43A(1)(b) of the Principal Act is amended by omitting “*Australian Consumer Law (Tasmania) Act 2010*” and substituting “*Australian Consumer Law (Tasmania)*”.

10. Section 45 amended (Meaning of “volunteer”)

Section 45(1) of the Principal Act is amended by inserting “or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act*”

*No. 54 of 2002

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 10

Part 4 – Civil Liability Act 2002 Amended

*2011” after “Workers Rehabilitation and
Compensation Act 1988” in paragraph (a) of the
definition of “volunteer”.*

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 5 – Civil Process Act 1985 Amended

s. 11

PART 5 – CIVIL PROCESS ACT 1985 AMENDED

11. Principal Act

In this Part, the *Civil Process Act 1985** is referred to as the Principal Act.

12. Section 4 amended (Prevalence of this Act)

Section 4(2) of the Principal Act is amended by omitting paragraph (g) and substituting the following paragraph:

- (g) proceedings under –
 - (i) the *Workers Rehabilitation and Compensation Act 1988*; or
 - (ii) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or

*No. 73 of 1985

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

s. 13

Part 6 – Director of Public Prosecutions Act 1973 Amended

**PART 6 – DIRECTOR OF PUBLIC PROSECUTIONS
ACT 1973 AMENDED**

13. Principal Act

In this Part, the *Director of Public Prosecutions Act 1973** is referred to as the Principal Act.

14. Section 6 amended (Remuneration of Director)

Section 6(3) of the Principal Act is amended by inserting “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”.

*No. 11 of 1973

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 7 – Evidence (Audio and Audio Visual Links) Regulations 2008
Amended

s. 15

**PART 7 – EVIDENCE (AUDIO AND AUDIO VISUAL
LINKS) REGULATIONS 2008 AMENDED**

15. Principal Regulations

In this Part, the *Evidence (Audio and Audio Visual Links) Regulations 2008** are referred to as the Principal Regulations.

16. Regulation 4 amended (Certain tribunals prescribed as Tasmanian courts)

Regulation 4 of the Principal Regulations is amended by inserting after paragraph (h) the following paragraph:

(ha) Asbestos Compensation Tribunal;

*S.R. 2008, No. 72

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 17

Part 8 – Fire Service Act 1979 Amended

PART 8 – FIRE SERVICE ACT 1979 AMENDED

17. Principal Act

In this Part, the *Fire Service Act 1979** is referred to as the Principal Act.

18. Section 40 amended (Assistance in relation to civil emergencies)

Section 40(3) of the Principal Act is amended by inserting “and section 19 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “section 5 of the *Workers Rehabilitation and Compensation Act 1988*”.

19. Section 41 amended (Services outside fire-fighting)

Section 41(5) of the Principal Act is amended by inserting “and section 19 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “section 5 of the *Workers Rehabilitation and Compensation Act 1988*”.

*No. 35 of 1979

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 8 – Fire Service Act 1979 Amended

s. 20

20. Section 130A amended (Provisions relating to employment)

Section 130A(2) of the Principal Act is amended by inserting “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 21

Part 9 – Health (Fees) Regulations 2007 Amended

**PART 9 – HEALTH (FEES) REGULATIONS 2007
AMENDED**

21. Principal Regulations

In this Part, the *Health (Fees) Regulations 2007** are referred to as the Principal Regulations.

22. Regulation 3 amended (Interpretation)

Regulation 3 of the Principal Regulations is amended by inserting after subparagraph (ii) in paragraph (a) of the definition of “compensable patient” the following subparagraph:

- (iia) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or

*S.R. 2007, No. 92

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 10 – Health Act 1997 Amended

s. 23

PART 10 – HEALTH ACT 1997 AMENDED

23. Principal Act

In this Part, the *Health Act 1997** is referred to as the Principal Act.

24. Section 7 amended (Fees)

Section 7 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) The fee payable for hospital services provided to a person whose fees and charges are being funded by the Asbestos Compensation Commissioner appointed under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* is the amount agreed from time to time by the Minister and the Asbestos Compensation Commissioner for the provision of those services.

*No. 13 of 1997

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 25

Part 11 – Health Complaints Act 1995 Amended

**PART 11 – HEALTH COMPLAINTS ACT 1995
AMENDED**

25. Principal Act

In this Part, the *Health Complaints Act 1995** is referred to as the Principal Act.

26. Section 30 amended (Withdrawal of complaint)

Section 30(3) of the Principal Act is amended by omitting “section 25(1)(a)” and substituting “section 25(1A)(a)”.

27. Section 36 amended (Commissioner may end conciliation)

Section 36(2)(b) of the Principal Act is amended by omitting “section 25(1)(a)” and substituting “section 25(1A)(a)”.

28. Section 43 amended (Conduct of investigation)

Section 43(2) of the Principal Act is amended by omitting “section 25(1)(b)(i)” and substituting “section 25(1A)(b)(i)”.

*No. 95 of 1995

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 11 – Health Complaints Act 1995 Amended

s. 29

29. Schedule 1 amended (Health Services)

Schedule 1 to the Principal Act is amended by omitting Part 2 and substituting:

PART 2 – SERVICES THAT ARE NOT HEALTH SERVICES

1. The provision of an opinion or the making of a decision for the purposes of a claim under the *Workers Rehabilitation and Compensation Act 1988*.
2. The provision of an opinion or the making of a decision for the purposes of, or in relation to, an application made to the Asbestos Compensation Commissioner, or the Asbestos Compensation Tribunal, under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

s. 30

Part 12 – Industrial Relations Act 1984 Amended

**PART 12 – INDUSTRIAL RELATIONS ACT 1984
AMENDED**

30. Principal Act

In this Part, the *Industrial Relations Act 1984** is referred to as the Principal Act.

31. Section 6 amended (Provisions relating to appointment of Commissioners)

Section 6(5) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; and

*No. 21 of 1984

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 13 – Local Government Act 1993 Amended

s. 32

**PART 13 – LOCAL GOVERNMENT ACT 1993
AMENDED**

32. Principal Act

In this Part, the *Local Government Act 1993** is referred to as the Principal Act.

33. Section 265 amended (Electoral officers)

Section 265(4) of the Principal Act is amended by inserting “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”.

*No. 95 of 1993

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

s. 34 Part 14 – Long Service Leave (Casual Wharf Employees) Act 1982
Amended

**PART 14 – LONG SERVICE LEAVE (CASUAL WHARF
EMPLOYEES) ACT 1982 AMENDED**

34. Principal Act

In this Part, the *Long Service Leave (Casual Wharf Employees) Act 1982** is referred to as the Principal Act.

35. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting “or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*” in the definition of “workers' compensation”.

*No. 37 of 1982

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 15 – Long Service Leave Act 1976 Amended

s. 36

**PART 15 – LONG SERVICE LEAVE ACT 1976
AMENDED**

36. Principal Act

In this Part, the *Long Service Leave Act 1976** is referred to as the Principal Act.

37. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended by inserting after paragraph (a) in the definition of “workers' compensation” the following paragraph:

- (ab) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or

*No. 95 of 1976

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

s. 38

Part 16 – Magistrates Court Act 1987 Amended

**PART 16 – MAGISTRATES COURT ACT 1987
AMENDED**

38. Principal Act

In this Part, the *Magistrates Court Act 1987** is referred to as the Principal Act.

39. Section 10 amended (Terms and conditions of service of magistrates)

Section 10(4) of the Principal Act is amended by inserting “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”.

*No. 45 of 1987

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 17 – Motor Accidents (Liabilities and Compensation) Act 1973
Amended

s. 40

**PART 17 – MOTOR ACCIDENTS (LIABILITIES AND
COMPENSATION) ACT 1973 AMENDED**

40. Principal Act

In this Part, the *Motor Accidents (Liabilities and Compensation) Act 1973** is referred to as the Principal Act.

41. Section 14 amended (General liability of Board in respect of motor accidents)

Section 14 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) Subsection (1) does not apply to any liability in relation to the contraction by a person of an asbestos-related disease, within the meaning of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, if the person is entitled to compensation under that Act in relation to the contraction by the person of that disease.

*No. 71 of 1973

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 42 Part 17 – Motor Accidents (Liabilities and Compensation) Act 1973
Amended

42. Section 24 amended (Exclusions from scheduled benefits)

Section 24(1) of the Principal Act is amended by inserting after paragraph (ba) the following paragraph:

- (bb) where the personal injury consists of the contraction by the person of an asbestos-related disease, within the meaning of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* and the person is entitled to compensation under that Act in relation to the contraction by the person of that disease;

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 18 – Retirement Benefits Regulations 2005 Amended

s. 43

**PART 18 – RETIREMENT BENEFITS REGULATIONS
2005 AMENDED**

43. Principal Regulations

In this Part, the *Retirement Benefits Regulations 2005** are referred to as the Principal Regulations.

44. Regulation 85 amended (Reduction or suspension of invalidity pensions in certain cases)

Regulation 85(1) of the Principal Regulations is amended by omitting paragraph (d) and substituting the following paragraph:

- (d) is in receipt of –
- (i) regular workers compensation payments under the *Workers Rehabilitation and Compensation Act 1988*; or
 - (ii) regular weekly payments under Part 7 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* –

and the combined payments of the invalidity pension and those workers

*S.R. 2005, No. 77

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 44

Part 18 – Retirement Benefits Regulations 2005 Amended

compensation payments or regular weekly payments exceed the salary received, or taken by the Board to have been received, in the previous 12 months –

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 19 – Sentencing Act 1997 Amended

s. 45

PART 19 – SENTENCING ACT 1997 AMENDED

45. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

46. Section 36A amended (Offender discharging order is taken to be Crown employee for certain purposes)

Section 36A of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) Despite subsection (1), an offender discharging a community service order is not to be taken to be a worker for the purposes of section 84(3) of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* if he or she is a worker for the purposes

*No. 59 of 1997

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 46

Part 19 – Sentencing Act 1997 Amended

of section 84(3) of that Act by
reason only of the application of
subsection (1) of this Act.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011*
Act No. of

Part 20 – Solicitor-General Act 1983 Amended

s. 47

**PART 20 – SOLICITOR-GENERAL ACT 1983
AMENDED**

47. Principal Act

In this Part, the *Solicitor-General Act 1983** is referred to as the Principal Act.

48. Section 5 amended (Terms and conditions of service of Solicitor-General)

Section 5(4) of the Principal Act is amended by inserting “and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “*Workers Rehabilitation and Compensation Act 1988*”.

*No. 13 of 1983

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 49 Part 21 – Workers Rehabilitation and Compensation Act 1988 Amended

**PART 21 – WORKERS REHABILITATION AND
COMPENSATION ACT 1988 AMENDED**

49. Principal Act

In this Part, the *Workers Rehabilitation and Compensation Act 1988** is referred to as the Principal Act.

50. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “injury” and substituting the following definition:

“injury” includes –

- (a) a disease; and
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration –

but does not, except for the purposes of section 97(1)(b) and (c), include an

*No. 4 of 1988

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

asbestos-related disease within the meaning of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*;

51. Section 77F amended (Revocation or suspension of accreditations)

Section 77F(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “provision of this Act”;
- (b) by inserting in paragraph (a) “or that Act” after “under this Act”;
- (c) by inserting in paragraph (a) “, the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “requirements of this Act”;
- (d) by inserting in paragraph (b) “or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*” after “Act”.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 52

Part 21 – Workers Rehabilitation and Compensation Act 1988 Amended

52. Section 164BA inserted

After section 164A of the Principal Act, the following section is inserted in Part XIII:

164BA. Application of *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*

(1) In this section –

“asbestos-related disease” has the same meaning as it has in the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

(2) If a claim for compensation in respect of an injury consisting of an asbestos-related disease was made by a person before the commencement of the *Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011*, the amendment effected by that Act to the definition of “injury” in section 3 does not apply in respect of that person in relation to that claim or any subsequent claim for compensation made in relation to that injury.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

Part 21 – Workers Rehabilitation and Compensation Act 1988 Amended

s. 53

**53. Schedule 4 amended (Diseases in Respect of Which
There is Presumption of Cause)**

Schedule 4 to the Principal Act is amended by
omitting

Asbestosis.	Any work involving exposure to inhalation of asbestos fibres.
Primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or of the peritoneum.	Any work involving exposure to inhalation of asbestos fibres.

*Asbestos-Related Diseases (Occupational Exposure)
Compensation (Consequential Amendments) Act 2011
Act No. of*

s. 54

Part 22 – Concluding Provisions

PART 22 – CONCLUDING PROVISIONS

54. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.