

## **FACT SHEET**

### **Asbestos-Related Diseases (Occupational Exposure) Compensation Bill 2011**

### **Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Bill 2011**

- The purpose of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Bill* is to establish a scheme for the payment of compensation, and certain other expenses, related to the contraction of asbestos related diseases, by workers, who are exposed to asbestos in the course of their employment.
- The need for change comes from the confusion in the current statutory system where the *Workers Compensation Act 1927* and the *Workers Rehabilitation and Compensation Act 1988* apply.
- As a result of this confusion, workers do not use the statutory system for compensation. They use common law, where negligence must be proven.
- The Bill provides for commencement on a day to be proclaimed. This will enable the provisions of the Bill and the Regulations to be coordinated to come into effect on the same day, 1 October 2011.
- The Bill's provisions will apply to workers who have contracted a compensable disease that is reasonably attributable to exposure during the course of their employment, and it is proposed that compensation awarded under the Bill will occur quickly, within four weeks from the time all evidence is provided.
- A compensable disease occurs when a person has an asbestos related disease, the contraction of the disease is reasonably attributable to exposure during the course of

employment, and the person was exposed in the course of employment during a period in which the employment was connected with this State.

- The Bill identifies the Asbestos Compensation Commissioner, which will be responsible for making determinations regarding a worker's application for compensation, and managing all monies in the Asbestos Compensation Fund.
- A Medical Panel will assist the Commissioner in making its determinations.
- The Bill will provide compensation to workers with an imminently fatal or non-imminently fatal compensable disease. Imminently fatal refers to a worker that has less than two years life expectancy from the time of correct diagnosis. Non-imminently fatal refers to a worker with more than two year's life expectancy from the time of correct diagnosis.
- A worker with an imminently fatal compensable disease will receive a lump sum, approximately \$250,000, and an additional lump sum based on age, if under 80 years old. Reasonable medical expenses will also be paid. However, when a worker hits \$87,000 in medical expenses, a review will occur to ensure they are receiving the correct treatment.
- A worker with a non-imminently fatal asbestos related disease must undergo an impairment assessment. Compensation is only payable if the worker has a whole person impairment of 10% or more. Three lump sums will be provided depending on impairment, up to a total of approximately \$250,000. However, in those cases where a worker is assessed the first time and their whole person impairment is 51% or more, they will receive all three lump sums in one, approximately \$250,000. Uncapped reasonable

medical expenses will also be paid for workers with a non-imminently fatal asbestos related disease.

- If the worker is still employed, weekly payments will be paid based on incapacity. This is the same as the Workers Rehabilitation and Compensation Act, except there will be no step-down provisions, reflecting the often fatal nature of asbestos related diseases.
- If a person is receiving compensation for a non-imminently fatal asbestos related disease, and they are then diagnosed as imminently fatal, or develop a different imminently fatal asbestos related disease, they will be paid any remaining lump sums up to approximately \$250,000. They will also receive the age based payment, if eligible. Medical expenses will be reset, and uncapped reasonable medical expenses will be paid, with a review at \$87,000.
- It is important to note that if a worker is diagnosed with two non-imminently fatal asbestos related diseases, they are not paid two lots of compensation. Rather both diseases are taken together to form the whole person impairment rating.
- Another feature of the Bill is that members of the family are entitled to compensation if their loved one has died of an asbestos related disease. If it can be proved that if the worker was still alive, they had a compensable disease, the members of the family are entitled to the same amount of compensation the worker would have received.
- Members of the family will include spouses, significant others, and children under the age of 22 at the time of the worker's death.
- There will be a capacity for a worker to nominate who, among the members of the family, they wish their compensation to be paid to in the event they die after making an application for compensation, but before receiving

compensation. The worker will also be able to nominate step-children.

- A worker will have 12 months to apply for compensation following the correct diagnosis of an imminently fatal asbestos related disease. Additionally, members of the family will have 12 months to apply for compensation following the death of the worker. In the event that correct diagnosis or death occurs prior to the proclamation of this Bill, the worker or member of the family will have 12 months to apply for compensation after proclamation.
- There are no application time frames for non-imminently fatal diseases.
- Another feature of the Bill relates to Common Law. It is intended that all workers with a compensable disease must go through the statutory scheme prior to commencing Common Law action. In the event that damages under Common Law exceed, or are the same as the compensation paid under the Bill, that compensation must be repaid. In the event that damages under Common Law are less than the amount paid under the Bill, the amount of damages paid must be reimbursed. These provisions apply to both workers and members of the family.
- The Bill imposes a levy on all workers' compensation insurance premiums, including licensed insurers, self insurers and the Tasmanian Government. The levy has the support of the key business group representative, the Tasmanian Chamber of Commerce and Industry.
- This levy will be set at 4%, with discretion to modify it as required. This will ensure the scheme is self-funded. Initial estimates suggest the levy may be reduced after a few years.
- This Bill has been produced with low occupational evidentiary barriers. This reflects that after, sometimes 40 years, businesses have closed, records are gone, and

insurers have folded. An application can be more easily assessed with as much evidence as possible, such as pay slips, tax returns, and so on. However, in cases where this no longer exists, a statutory declaration may be accepted.

- It will also be deemed that occupational exposure is responsible for the development of an asbestos related disease if the worker was employed in a position that resulted in cumulative exposure over a 12 month period. For example, the manufacture of asbestos materials such as asbestos cement sheeting would be deemed to be such an occupation.
- The *Asbestos Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Bill 2011* has also been finalised. This Bill makes certain provisions relating to relevant legislation to ensure all workers are covered by the proposed *Asbestos Related Diseases (Occupational Exposure) Compensation Bill*.
- In addition, it removes workers with asbestos related diseases from the current *Workers Rehabilitation and Compensation Act* and places them under the *Asbestos Related Diseases (Occupational Exposure) Compensation Bill*. It will also ensure that employers continue to be covered by workers compensation insurance in the case of being sued at Common Law.