

SECOND READING SPEECH

Asbestos Related Diseases (Occupational Exposure) **Compensation Bill**

Mr Speaker, I move that the Bill now be read a second time.

Mr Speaker, the purpose of this 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, through exposure to asbestos in the course of their employment.

Exposure to asbestos can cause serious and often fatal health problems, such as mesothelioma, asbestosis and lung cancer.

Mesothelioma, for example, has an extremely poor prognosis. Side effects may include severe pain in the chest wall or abdomen, fluid surrounding the lungs, tiredness, shortness of breath, blood in the sputum, blood clots in veins, bleeding in body organs, jaundice, blood clots in the arteries of the lungs, abnormal build up of fluid in the abdomen, a mass in the abdomen, problems with bowel function, and weight loss.

In the period from 1986 to 2007 there were 147 mesothelioma related deaths recorded in Tasmania.

Asbestos related diseases account for more work related deaths in Tasmania than any other injury or illness.

Given the long latency of these diseases, a worker may be exposed to asbestos and not develop a disease until 40 years later.

In Tasmania many workers with asbestos related diseases do not receive the care and support they need. The current system is letting them down.

This tragic loss of life and the way in which workers with these diseases are treated has raised questions about the current statutory compensation system in Tasmania – as it should.

There are presently two Acts in Tasmania that apply in relation to statutory compensation for workers with occupationally caused asbestos related diseases:

- The *Workers Compensation Act 1927*; and
- The *Workers Rehabilitation and Compensation Act 1988*.

Under the 1927 Act, compensation is limited to diseases defined in a schedule, and it was not until 1980 that asbestos related diseases were included in that schedule.

As a result, a worker who suffered a disease prior to 1980 has had to establish that the disease would otherwise have been an injury or accident. This presented significant difficulties.

Under both the 1927 and 1988 Acts there is difficulty in determining the date the disease occurred. Is it the date exposure has taken place, the date the first symptoms start, or the date it is first diagnosed? This makes it hard to determine under which Act entitlement falls.

In addition, while it is possible for workers who have passed retirement age to access some benefits under the 1927 Act and 1988 Act, both of those Acts have a greater focus on workers who are still of working age.

There are also evidentiary barriers under the current system due to the long time frames involved between exposure and the illness. These include destruction of records, employers shutting up shop, insurers going under, and difficulties actually working out who the employer was insured with at the time of exposure.

As a result many workers pursue common law damages. This is expensive, and requires them to prove negligence.

The Government has carefully considered these issues and is of the view that the most effective way to address this is through new, stand-alone, asbestos compensation legislation.

The Bill is the outcome of extensive consultation with stakeholder groups and proposals drafted by an Expert Legal Group.

These consultations commenced in March 2009 with an asbestos forum held in Hobart, where a range of stakeholders, expert and regulator views were expressed.

The Government then established a tripartite Steering Committee on Asbestos Management in Tasmania. The Steering Committee formed an Expert Legal Group with a view to producing a model for statutory occupational asbestos compensation that best suits Tasmania.

Proposals for the content of new legislation were developed by the Expert Legal Group, which included representatives of:

- Maurice Blackburn Lawyers;
- Slater and Gordon;
- Workers Rehabilitation and Compensation Tribunal; and
- Workplace Standards Tasmania.

The tripartite Steering Committee agreed with the Expert Legal Group's detailed proposals, and recommended that they form the basis of drafting instructions for the new legislation.

The Bill also takes into account the feedback provided during public comment on a detailed Regulatory Impact Statement released in late 2010.

The Regulatory Impact Statement concluded that the benefits of the proposals outweighed the costs. However, there was some criticism that compensation for victims with asbestos diseases as a result of non-occupational exposure had not been addressed.

The majority of asbestos related diseases caused in Tasmania have been through direct exposure at work. Therefore a statutory scheme for workers is appropriate because it is not beyond expectation that when a person goes to work, they do not end up with a potentially life threatening disease.

People exposed through other means are still entitled to pursue common law damages.

The provisions of the Bill will be supported by the *Asbestos Related Diseases (Occupational Exposure) Compensation Regulations*. These regulations will include key provisions relating to aged based compensation payments and expenses.

It is proposed that the provisions in the Bill and those in the proposed Regulations will come into effect on the same day, 1 October 2011.

The Bill will establish a scheme which will provide workers with compensation at appropriate levels, to ensure they have some comfort, and access to good medical care in what is a very difficult time for them and their families.

It is proposed that compensation awarded under the Bill will occur quickly, within four weeks from the time all evidence is provided.

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.

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 requires that the contraction of the asbestos related disease is 'reasonably attributable' to exposure to asbestos in the course of the person's employment as a worker. This means that there must be a causal connection between the contraction of the disease and exposure to asbestos at work.

The degree of causation that is required is that the contraction of the disease must be 'reasonably attributable' to exposure to asbestos at work. It is not necessary to prove that exposure to asbestos was the major or predominant cause of the disease, as long as it can be proven that the exposure to asbestos made a 'material contribution' to the contraction of the disease.

The term 'material contribution' can mean that one factor can contribute to an outcome even though, relative to another factor, it has a minor effect. All that is required is that the effect be 'material'. Any assessment of this materiality is an evaluative judgment.

Where the exposure may have arisen in more than one situation, it is the occupational exposure to asbestos (or the nature thereof) to which the disease must be reasonably attributable, in order to satisfy the test.

Employment must be in connection with Tasmania. This applies to workers who live and work primarily in Tasmania. It will also include workers that may live and work primarily in Tasmania, but have been sent by their employer interstate to work for a brief period. If the worker is exposed to asbestos during that period, and they develop an asbestos related

disease, then the employment is connected with this State and they are entitled under this scheme.

Conversely, if a worker lives and works primarily in another jurisdiction, but have been sent by their employer to Tasmania to work for a brief period and are exposed to asbestos here, that employment is connected with the other jurisdiction. Those workers are not entitled to compensation under this Bill.

The Bill identifies the Asbestos Compensation Commissioner. The Commissioner will be responsible for making determinations regarding a worker's application for compensation. They will refer all cases to a Medical Panel for its determination as to whether a worker has an asbestos related disease, and the disease is reasonably attributable to exposure through work.

The Commissioner will make a final determination as to whether the person is a 'worker' under this Bill, and whether compensation is payable.

The Commissioner will also be responsible for managing all monies in the Asbestos Compensation Fund.

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.

All reasonable medical expenses will be paid. However, when a worker hits \$87,000 in medical expenses, a review will occur to ensure they are receiving the correct treatment.

Under this regime a 64 year old worker with an imminently fatal disease, such as mesothelioma, will be entitled to receive compensation of approximately \$500,000. An 83 year old worker suffering the same condition will be entitled to receive about \$250,000. Uncapped reasonable medical expenses will also be provided.

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.

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.

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

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. This forms the first lump

sum payment under the imminently fatal regime. They will then receive the age based payment, if eligible. Reasonable 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. The diseases are taken together to form a whole person impairment rating and compensation is paid on that basis.

The same applies if a worker is diagnosed with two imminently fatal asbestos related diseases. They will not receive two lots of compensation.

If a worker has received compensation from another statutory scheme or damages at common law, including inter-state or overseas, they will not be eligible for compensation under this Bill for that same disease.

If they develop a different asbestos related disease they will be eligible. This Bill treats different diseases separately.

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

If a member of the family has received compensation for the asbestos related disease the worker died from, either through another statutory scheme, or through common law, they will not be eligible under this Bill.

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 time frames for application in relation to 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. However, in the event where a spouse and children receive statutory compensation and the spouse then receives common law damages, the spouse will only have to repay what they themselves received under the Bill, not what the children may have received.

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 the aim that the scheme will be self-funding. 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.

Mr Speaker, the main objective of this Bill is to provide no-fault statutory compensation to workers who have contracted an asbestos related disease as a result of exposure at work.

This Bill will ensure that workers with asbestos related diseases are provided for appropriately.

This Bill, in combination with the supporting regulations provides a considered approach that will create a cleaner, easier to understand, and more effective statutory system.

It has been developed in consultation with major stakeholders.

Members of the community have had the opportunity to provide submissions twice, once through the Regulatory Impact Statement process late last year, and again this year when the draft Bill was released for public comment.

I have no doubt, Mr Speaker that this Bill will provide workers and their families with the support and care they need but are not currently receiving.

Now Mr Speaker I will be moving two amendments to this Bill. The opposition and the Tasmanian Greens are aware of the nature of those amendments. I now circulate those and we can deal with them during the Committee stage.

The first amendment relates to the ability of the Asbestos Commissioner to recover against employers who are not paying the levy. And the second amendment effectively caps the levy on employers at 4%.

Mr Speaker I want to take this opportunity to thank some of the key people who have been involved in various stages in developing this Bill. Whilst I have the great honour of presenting the Bill to Parliament I think it is important to recognise the people who have played very important parts in developing the policy and legislation which has got us to this point.

And Mr Speaker I know that some of them are in the House today and others are watching the webcast of this debate.

I'd like to thank my predecessor – now Senator Lisa Singh, who was the former Tasmanian Minister for Workplace Relations.

I'd also like to thank some key stakeholders such as Unions Tasmania, in particular Susan Wallace, Simon Cocker and Kevin Harkins; The Australian Workers Union, in particular Ian Wakefield; And I thank the men and women of the Tasmanian Union Movement for their support for this cause over many years.

I thank the Tasmanian Chamber of Commerce and Industry, in particular Robert Wallace, Bob Gozzi and members of their Occupational Health and Safety Committee; Dr Robert Walters and members of the Asbestos Steering Committee; Workplace Standards Tasmania including Roy Ormerod, Colleen Johnstone and staff in the Asbestos and Policy units.

I also thank the WorkCover Tasmania Board and the staff at the Office of Parliamentary Council in particular Robyn Webb who was the primary drafter of this Bill.

And last but not least I would like to thank everyone who made submissions during the development of the policy and the draft legislation. Although it has not been possible to accommodate every view and every wish the submissions have certainly contributed to making the legislation a better compensation package for workers.

Mr Speaker on behalf of all of those people and on behalf of every worker who stands to benefit from this legislation - I commend this Bill to the House.