

TASMANIA

**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
AMENDMENT BILL 2023**

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**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
AMENDMENT BILL 2023**

*(Brought in by the Minister for Workplace Safety and
Consumer Affairs, the Honourable Madeleine Ruth Ogilvie)*

A BILL FOR

**An Act to amend the *Asbestos-Related Diseases
(Occupational Exposure) Compensation Act 2011***

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Asbestos-Related Diseases (Occupational Exposure) Compensation Amendment Act 2023*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011** is referred to as the Principal Act.

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4. Section 61 amended (Determinations by medical panel if matter referred to accredited impairment assessors)

Section 61 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Subject to subsection (3), if the medical panel receives from the Commissioner, under section 47, a notice of a determination under section 45(3) in relation to a medical question –
 - (a) the determination is taken to be a determination of the medical panel under section 60 in relation to the medical question if the medical panel agrees with the determination; or
 - (b) if the medical panel does not agree with the determination, the determination is taken to be a referral of the medical question to the medical panel for the purposes of section 60.

5. Section 116 amended (Interpretation of Part 11)

Section 116 of the Principal Act is amended as follows:

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(a) by inserting the following paragraph after paragraph (b) in the definition of *compensable services*:

(ba) support services; or

(b) by inserting the following definitions after the definition of *rehabilitation services*:

relevant family member, in relation to a compensable person, means a person who –

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

(b) would be a member of the family, of the compensable person, if the person had not attained the age of 22 years;

support services means counselling services or other services, to support a person's psychological or emotional wellbeing, provided by –

(a) a medical practitioner, psychologist or social worker; or

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- (b) a counsellor who is a member of, or who holds qualifications recognised by, the Australian Counselling Association (ABN 12 242 711 378);

6. Sections 118 and 119 substituted

Sections 118 and 119 of the Principal Act are repealed and the following sections are substituted:

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

- (1) Subject to subsection (2), the reasonable expenses necessarily incurred by, or in respect of, a compensable person are payable by the Commissioner, up to a total amount of 125 expenses units, if –
 - (a) the Commissioner has made a determination under this Act that the person has an imminently fatal asbestos-related disease; and
 - (b) the reasonable expenses were incurred –
 - (i) for medical services provided to the person, whether before or after the determination was made; and

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- (ii) for other compensable services provided to the person after the determination was made; and
 - (iii) for support services provided to a relevant family member of the person; and
 - (c) those services were required by the person, or relevant family member, as a result of the person having an imminently fatal asbestos-related disease.
- (2) In addition to the 125 expenses units referred to in subsection (1), the Commissioner may pay up to 15 expenses units for the reasonable expenses necessarily incurred by a compensable person for medical services if –
 - (a) the person’s application for compensation has been determined under section 70(1)(a); and
 - (b) the medical services were required as a result of the person –
 - (i) having an asbestos-related disease; or

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- (ii) making an application under this Act; and
 - (c) the medical services were provided to the person before the Commissioner made the determination referred to in subsection (1)(a).
- (3) If the reasonable expenses that are payable, in respect of a compensable person, by the Commissioner under this section exceeds the amount of expenses units specified in this section for those expenses, the Commissioner –
 - (a) must review the case of the person to whom the expenses relate; and
 - (b) must exclude any expenses paid, by the Commissioner in respect of the person, under section 119; and
 - (c) may, in the Commissioner’s discretion, pay the expenses or refuse to pay the expenses 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.

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

- (1) The reasonable expenses necessarily incurred by, or in respect of, a compensable person are payable by the Commissioner if –
 - (a) the person’s application for compensation has been determined under section 70(1)(a); and
 - (b) the Commissioner has not yet made a determination under this Act that the person has an imminently fatal asbestos-related disease; and
 - (c) the reasonable expenses were incurred –
 - (i) for medical services provided to the person, whether before or after the application was made; and
 - (ii) for other compensable services provided to the person after the application was made; and
 - (iii) for support services provided to a relevant

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family member of the
person; and

- (d) those services were required by the person, or relevant family member, as a result of the person having an asbestos-related disease.
- (2) In addition to the expenses payable under subsection (1), the Commissioner may pay up to 15 expenses units for the reasonable expenses necessarily incurred by a compensable person for medical services if –
- (a) the person’s application for compensation has been determined under section 70(1)(a); and
 - (b) the medical services were required as a result of the person –
 - (i) having an asbestos-related disease; or
 - (ii) making an application under this Act; and
 - (c) the medical services were provided to the person before the person’s application for compensation was determined under section 70(1)(a).

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- (3) 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.

7. Section 121 amended (How claim for payment of expenses may be made)

Section 121 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “member of the family” first occurring and substituting “relevant family member”;
- (b) by omitting from subsection (1) “of a member of the family” and substituting “a relevant family member”;
- (c) by inserting the following subsection after subsection (3):
- (4) A claim under subsection (1) may be made in respect of support services, provided to a relevant family member of a compensable person, that were provided up to 3 years after the death of the compensable person.

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8. Section 123 amended (Persons to whom expenses under this Part are to be paid)

Section 123 of the Principal Act is amended as follows:

- (a) by omitting “member of the family” from paragraph (c) of the definition of *relevant person* in subsection (1) and substituting “relevant family member”;
- (b) by omitting “member of the family” from paragraph (d) of the definition of *relevant person* in subsection (1) and substituting “relevant family member”;
- (c) by omitting from subsection (5)(b) “members of his or her family” and substituting “relevant family members of the compensable person”.

9. Section 126 amended (Questions as to whether Commissioner required to pay expenses may be referred to Tribunal)

Section 126(1) of the Principal Act is amended by omitting “member of the family of a compensable person” and substituting “relevant family member of the compensable person within the meaning of Part 11”.

10. Section 127A inserted

After section 127 of the Principal Act, the following section is inserted in Division 1:

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127A. Tribunal may determine compensation amounts in certain circumstances

- (1) A member of a family of a person who has a compensable disease may apply to the Tribunal if –
 - (a) compensation has been distributed in accordance with Schedule 1 in respect of the person who has a compensable disease; and
 - (b) the member of the family is aggrieved by the distribution of that compensation.
- (2) The Tribunal may determine a referral under section 127 and an application under subsection (1) at the same proceedings if –
 - (a) the referral and application relate to the same compensable person; and
 - (b) neither the referral, nor the application, had been determined by the Tribunal at the time when the other had been received by the Tribunal.
- (3) If the Tribunal receives an application under subsection (1), the Tribunal may review the distribution of the compensation and –

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- (a) confirm that the distribution of the compensation in accordance with Schedule 1 is appropriate, or reasonable, in the circumstances; or
 - (b) if the Tribunal determines that the distribution of the compensation in accordance with Schedule 1 is not appropriate, or reasonable, in the circumstances, make an order that –
 - (i) specifies how the compensation is to be distributed; and
 - (ii) requires a person, to whom compensation has been distributed, to repay such amount of the compensation as is required for the compensation to be distributed as specified in the order.
- (4) For the purposes of subsection (3), the Tribunal is to consider how compensation may be provided in accordance with Schedule 1 but is not bound by that Schedule when determining –

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- (a) if the distribution of compensation in accordance with that Schedule is appropriate, or reasonable, in the circumstances; or
 - (b) how compensation is to be distributed under an order made by the Tribunal under subsection (3)(b).
- (5) Except as specified in this section, the Tribunal may hear and determine an application under subsection (1) in accordance with the provisions of the *Tasmanian Civil and Administrative Tribunal Act 2020*.

11. Part 12, Division 2: Heading amended

Division 2 of Part 12 of the Principal Act is amended by omitting “*Asbestos Compensation Tribunal*” from the heading to that Division and substituting “*Tribunal*”.

12. Section 146 amended (Costs)

Section 146 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and this section” after “section 143(4)”;
- (b) by inserting the following subsection after subsection (2):

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- (3) The Tribunal is to order the Commissioner to pay the costs incurred by another party in respect of proceedings to which this Act relates if –
- (a) the proceedings are determined in the favour of the other party; and
 - (b) during the proceedings, the Tribunal finds that a medical panel made an error in applying the law to a medical question in respect of a person; and
 - (c) the Tribunal is satisfied that, had the error of law not been made, the Commissioner would have determined that one or more of the following would have applied in respect of the person:
 - (i) the person would have been entitled to compensation under this Act in accordance with section 70;
 - (ii) the person would have been entitled

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under section 74,
or 76, to
compensation by
way of lump sum.

13. Section 162 amended (Asbestos Compensation Fund)

Section 162(4) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) the costs and expenses incurred in the provision of training and education of professionals performing functions under this Act, and the community generally, if the Commissioner is satisfied that the costs and expenses are reasonable in the circumstances; and

14. Section 173 amended (Commissioner may seek to recover certain amounts from culpable manufacturers and suppliers)

Section 173 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) In addition to subsection (3), the Commissioner may also not recover under this section such part of a relevant amount in relation to a person who has a compensable disease if –

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- (a) the Commissioner has paid the relevant amount to the person, or a member of the family of the person, in accordance with this Act; and
- (b) the amount has been incorrectly calculated; and
- (c) the person or a member of the family of the person is not, either directly or indirectly, the cause of the incorrect calculation.

15. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act commenced.