



Guide to **Asbestos Compensation** in Tasmania



WorkSafe Tasmania
Department of Justice





Disclaimer

This information is for guidance only and not to be taken as an expression of the law. It should be read in conjunction with the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* and any other relevant legislation. To view, go to the WorkSafe Tasmania website at worksafe.tas.gov.au.

The forms referenced in this guide are available at worksafe.tas.gov.au or call the WorkSafe Tasmania Helpline on 1300 366 322.

Contents page

Introduction	4
Who is entitled to claim compensation?	5
Making a claim for compensation	7
Compensation benefits	11
Common law damages	15
Statutory compensation under other laws	16
Dispute resolution	17
Employer obligations	18

Introduction

Tasmania's asbestos compensation scheme provides compensation under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* (the Act) to a worker who develops an asbestos-related disease as a result of exposure to asbestos during the course of their work in Tasmania.

This Act has four main objectives:

- to ensure the provision of fair and appropriate compensation, and the payment of certain expenses, in relation to people contracting asbestos-related diseases in the course of employment as workers in connection with Tasmania
- to provide for the prompt and effective resolution of applications for compensation or the payment of certain expenses
- to provide an effective and economical mechanism for resolving disputes around applications for compensation or the payment of certain expenses
- to make provision for certain judgments and agreements about people contracting asbestos-related diseases in the course of employment as workers.

You can find the Act and the accompanying regulations at worksafe.tas.gov.au.

Who is entitled to claim compensation?

Definition of worker

To be entitled to compensation, you must be (or must have been) a worker as defined under the laws in place at the time of your exposure to asbestos. You are still defined as a worker if you have retired.

A worker is someone who has or had entered into or works or worked under a contract of service or training agreement with an employer.

Certain other people are also deemed to be workers:

- taxi drivers and hire-car drivers where they drive the vehicle with the consent or authority of a person who holds the licence or authority in Tasmania to operate the vehicle. This does not apply to a driver where the driver is also the holder of the licence or authority
- people engaged in plying for hire vehicles or vessels, where the use of the vehicle or vessel is obtained from the owner under a contract
- jockeys and apprentice jockeys
- ministers of religion
- volunteers engaged in fire-fighting or fire prevention operations
- volunteers engaged in providing ambulance services
- police volunteers.

Other people and volunteers may also be prescribed to be workers.

Certain people are not workers:

- people employed as outworkers
- people employed in employment of a casual nature other than for the purposes of the employer's trade or business
- people employed as a member of a fishing boat who is remunerated wholly or mainly by share in the profits of gross earnings in respect of that boat
- people participating in an approved program of work for unemployment payment under the *Social Security Act 1991* (Commonwealth)
- people who are Commonwealth employees when relevant exposure to asbestos occurred
- sportspeople.

When is a worker entitled to compensation?

You may be eligible for compensation if:

- you been diagnosed with an asbestos-related disease; and
- you were exposed to asbestos fibres while employed in Tasmania; and
- you have not previously received any compensation, including through a common law settlement, for the asbestos-related disease you are applying for.

Timeframes for when you must apply are covered in the section 'Making a claim for compensation'.

Family members

Certain family members of a worker who has died from an asbestos-related disease may be eligible for compensation if:

- that person is a member of the family of a worker who has died from an asbestos-related disease; and
- the deceased worker would have been eligible for compensation if they were still alive.

A family member has 12 months to apply for compensation following the death of the worker with the asbestos-related disease.

A family member of the deceased worker is defined as:

- a spouse of the person, or
- a person who has not attained the age of 22 years and who is:
 - a natural child of the person; or
 - a child who has been adopted by the person; or
 - a stepchild nominated by the worker.

Making a claim for compensation

Someone with an asbestos-related disease

There are a number of steps to making a claim for compensation.

Following the correct diagnosis of an asbestos-related disease, where your life expectancy due to that disease is:

- less than 2 years: you have 12 months to apply for compensation from the date a relevant medical certificate is provided to you.
- more than 2 years: there are no time limits to apply for compensation (see 'Non-imminently fatal' below for more details).

You must:

- use 'Form 1: Asbestos-Related Diseases – Claim for Compensation – Worker'.
- provide a medical certificate with a diagnosis from a medical specialist. The certificate must include your life expectancy. Use 'Form 9a: Initial medical certificate for asbestos-related disease compensation'
- provide all the necessary documents and evidence, which may include:
 - copies of recent payslips (where relevant)
 - copies of any relevant documents for pensions, benefits, allowances
 - copies of any relevant documents for other compensation you may be receiving or have already received
 - a copy of proof of significant or de-facto relationship, or a marriage certificate (where relevant)
 - copies of birth certificates or extracts for your children
 - copies of relevant employment details during the time you were exposed to asbestos
 - a completed medical certificate
 - relevant test results (such as x-rays) where possible
 - proof of identity.

You must lodge your application with the Asbestos Compensation Commissioner (details are on the form).

Once the Commissioner has received your application, they will check to ensure all the relevant information is available for a determination to be made.

During the course of your claim, you may be contacted by the Commissioner if further information is required.

You will be notified in writing of the determination of your application.

Non-imminently fatal

If you have a non-imminently fatal asbestos-related disease (your life expectancy more than two years), you will be referred to an impairment assessor to determine your level of impairment.

If you are assessed as having:

- 10% or more impairment of the whole person, this information is provided to the medical panel for determination.
- less than 10% impairment, you will not be entitled to compensation. You will be entitled to one free assessment each year to review your level of impairment.

Medical panels

The information you provide in your application is given to the medical panel. It determines a number of questions including:

- Does the worker have an asbestos-related disease?
- Is the disease reasonably attributable to exposure during the course of employment?
- Does the worker have an imminently or non-imminently fatal disease?
- If the disease is non-imminently fatal, what is the worker's impairment and incapacity for work if applicable?
- Is the worker likely to recover from the disease?

The medical panel then refers its determination to the Asbestos Compensation Commissioner. The Asbestos Compensation Commissioner cannot overturn the medical panel's determination.

The Asbestos Compensation Commissioner

The Commissioner cannot overturn the medical panel's determination.

The Commissioner will then determine whether you are/were a worker as defined under the laws, and if your employment was connected with the State of Tasmania

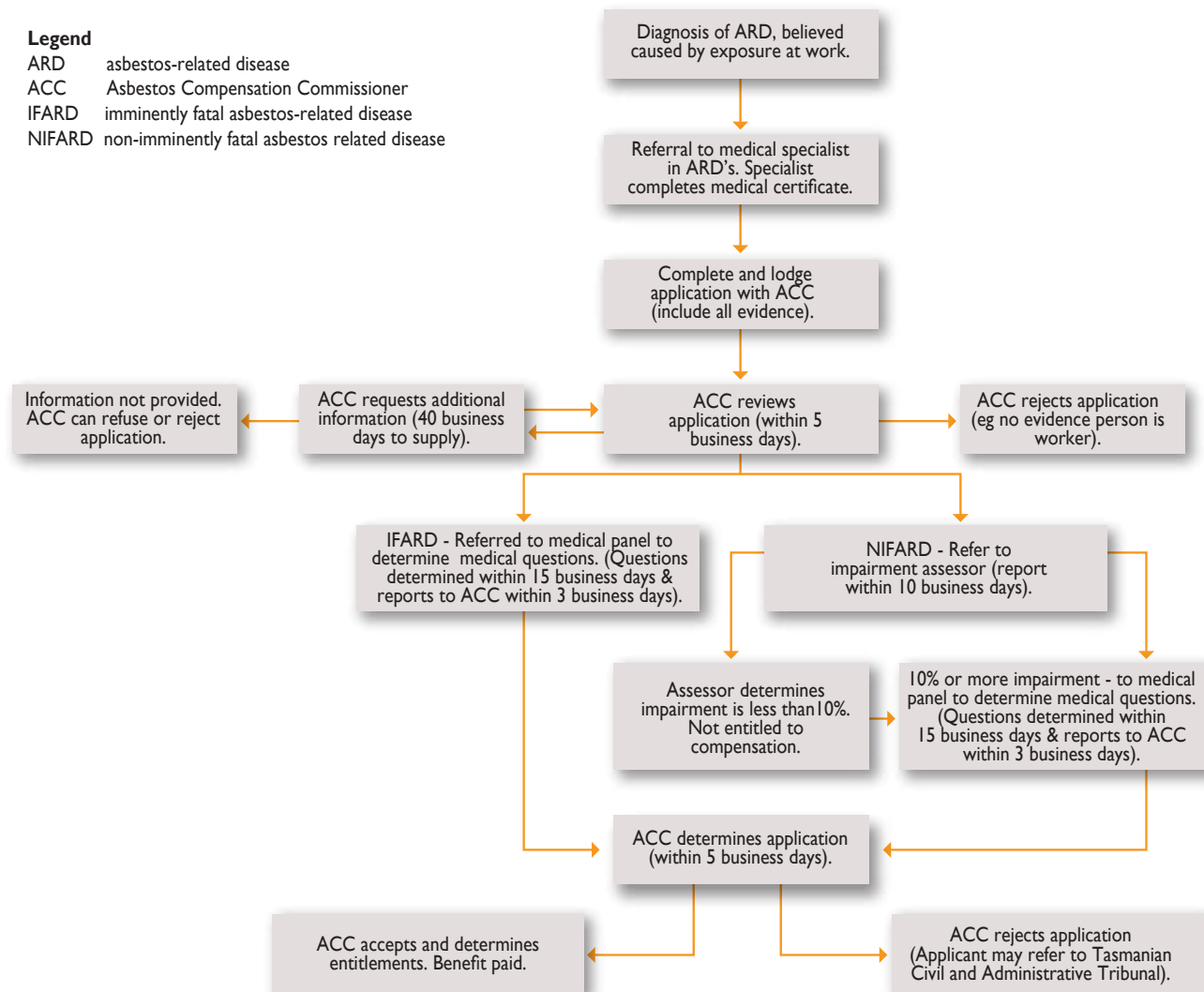
There are statutory timeframes for assessing and determining claims, with most claims determined within 28 business days.

Certain timeframes only apply where you provide all the required evidence with your initial application. The Asbestos Compensation Commissioner has more time to assess an application where more information must be sought.

In special circumstances, the Asbestos Compensation Commissioner may extend the time period to lodge an application for compensation. If you wish to apply for an extension, complete

'Form 5: Extension of time to lodge application'.

Worker application process



Member of the family of deceased worker

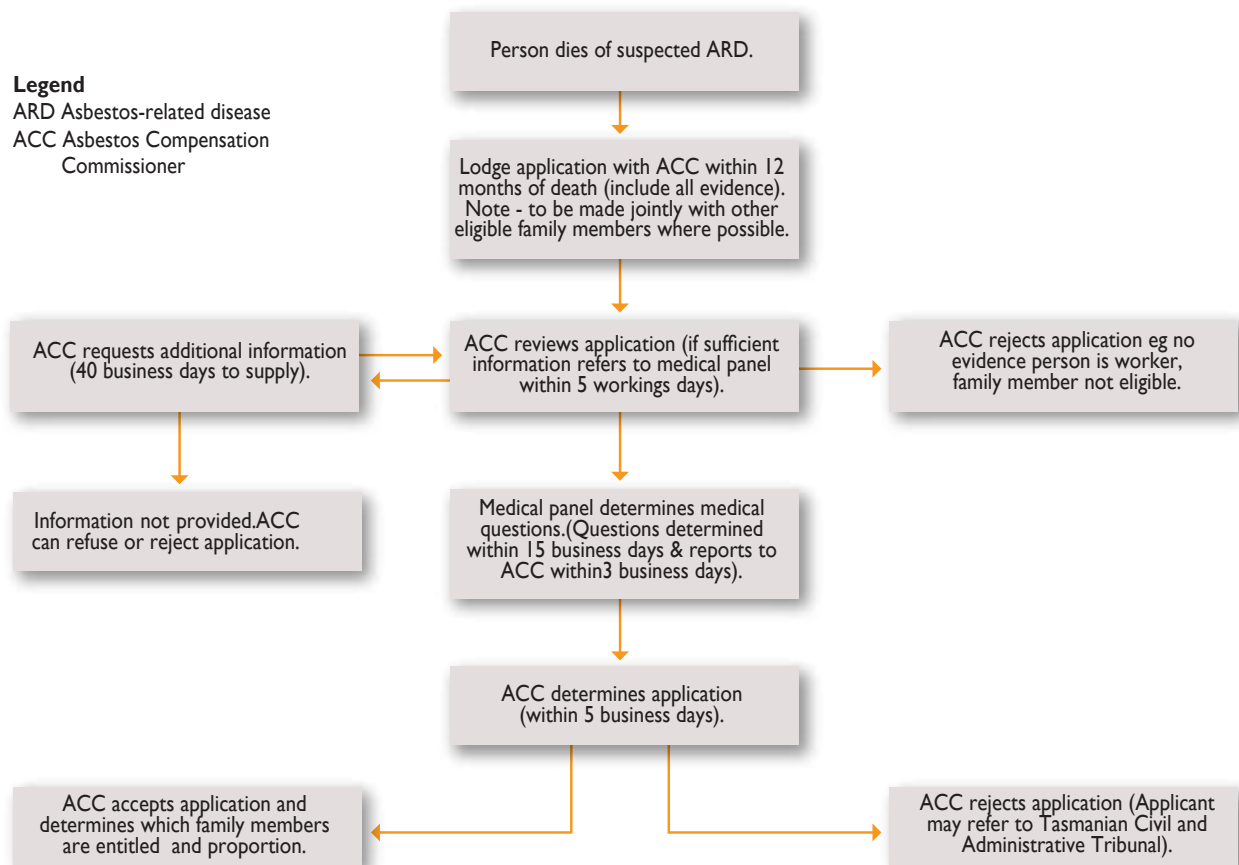
If you are a member of the family of a worker who has died from an asbestos-related disease, you have 12 months to apply for compensation following the death of the worker.

You must:

- use 'Form 2: Asbestos-Related Diseases – Claim for Compensation – Member of the Family'. All entitled members of the family must lodge one application together on the same form
- provide a death certificate. You must provide medical evidence that establishes that the deceased had an imminently fatal asbestos-related disease or died as a result of an asbestos-related disease
- provide all the necessary documents and evidence, which may include:
 - a copy of the deceased worker's death certificate
 - a copy of a signed relationship certificate (if relevant) or marriage certificate

- a copy of adoption papers (if relevant) and/or birth certificates of children of the deceased worker
- copies of any relevant documents for other compensation the deceased worker received or you received or are receiving as a result of the deceased worker's disease
- copies of the deceased person's relevant employment details during the time they were exposed to asbestos
- proof of identity.

Member of family of deceased worker application process



Compensation benefits

What are statutory benefits?

Statutory benefits are compensation payments or benefits payable under the Act. Statutory benefits are paid on a no fault basis; that is, it is not necessary to prove that anyone was at fault for causing the asbestos-related disease. As long as the requirements of the Act are met, a worker or a member of the family of a deceased worker may be entitled to benefits under the Act.

This can be distinguished from common law damages, where a person must prove that negligence on the part of another person resulted in or contributed to their illness or disease (see the section on common law damages).

Lump sum compensation

Imminently fatal

If you are diagnosed with an asbestos-related disease and have less than two years life expectancy, you may be entitled to lump sum compensation of 360 compensation units. In 2021, this was approximately \$343,519.20.

You may also be entitled to a further payment depending on your age. These age-based payments are detailed in the table below.

Age	Number of compensation units*
65 years or younger	360
66 years	323
67 years	291
68 years	262
69 years	236
70 years	212
71 years	191
72 years	172
73 years	155
74 years	139
75 years	126
76 years	113
77 years	102
78 years	92
79 years	83
80 years or older	nil

*as at January 2021, one compensation unit is equal to \$954.22

Non-imminently fatal

If you are diagnosed with an asbestos-related disease and have more than two years life expectancy (a non-imminently fatal disease), the lump sum payment will be based on your level of impairment, as shown in the table below.

Level of impairment	Number of compensation payments*
Less than 10%	Nil
10% - 25%	120
26% - 50%	240
51% or more	360

*As at January 2021, one compensation unit is equal to \$954.22

The total amount of lump sum compensation that you can receive for a non-imminently fatal disease cannot be more than 360 compensation units.

For example, if you are first assessed as having 10-25% whole person impairment, you will receive 120 compensation units. If you are subsequently assessed as having 26-50% impairment, you will be entitled to another 120 compensation units, making the total amount that you have received 240 compensation units. If you are then assessed as having 51% or more impairment, you will receive another 120 compensation units — making the total amount that you have received 360 compensation units.

In addition to any lump sums payable, you may also be entitled to receive weekly payments if you are incapacitated for work.

Weekly payments of compensation

Where a worker was employed for over 6 months during the 12 months before they applied for compensation, they may be entitled to weekly payments. To be eligible for weekly payments, a worker must have been found to be partially or totally incapacitated for work as a result of an asbestos-related disease.

The amount of weekly payments is that worker's normal weekly payments of the ordinary time rate of pay.

If the worker is partially incapacitated, they are entitled to weekly payments for the period of incapacity equal to the difference between:

- the amount of weekly payment to which they would have been entitled if totally incapacitated, and
- the amount that the worker is earning, or would be able to earn in suitable employment or business, during the period of incapacity.

If a worker is receiving weekly payments and they move away from Tasmania, they must prove:

- their identity and their new address
- that they remain incapacitated for work.

This information must be provided to the Asbestos Compensation Commissioner annually.

Weekly payments may be terminated or reduced if:

- the payment relates to total incapacity and the worker has returned to work, or
- the worker is receiving weekly payments for partial incapacity and is receiving weekly earnings in excess of the amount on which the amount of weekly payment was determined, or
- a medical practitioner has given a medical certificate certifying that the worker has wholly or substantially recovered from the asbestos-related disease, or the worker's incapacity is no longer due to the asbestos-related disease.

Weekly payments will cease:

- when a worker reaches pensionable age as defined by *Social Security Act 1991*.
- if a worker's disease becomes imminently fatal, and the worker will be entitled to receive any lump payments they have not yet received to reach the full amount of entitlement for non- imminently fatal diseases. They will also receive the aged based lump sum compensation if they are eligible.

The Asbestos Compensation Commissioner will determine whether weekly payments are to be made weekly or fortnightly.

Compensation to members of the family of deceased workers

Compensation may be payable to members of the family of a deceased worker where that worker died from an asbestos-related disease contracted through exposure to asbestos at work.

The lump sum amounts payable to family members are the same as a worker would have received if they were still alive. Family members are not entitled to weekly payments.

Where a member of family lodged a successful application for compensation in relation to a deceased worker, the eligible family members are only entitled to the lump sum compensation.

Tax and Centrelink implications

Lump sum compensation payments and weekly payments may have implications for calculating your tax, and may affect any payments you are receiving from Centrelink. Please seek advice from the Australian Taxation Office and/or Centrelink about your individual circumstances.

Australian Taxation Office: ato.gov.au

Centrelink Compensation Recovery: humanservices.gov.au and search for 'compensation'

Medical and other expenses

A range of medical and other expenses may be paid for a worker with a compensable disease.

Funeral expenses

If a worker dies from their asbestos-related disease after lodging a successful application for compensation, funeral expenses, up to a certain amount, are payable.

To claim for funeral expenses:

- use 'Form 6: Funeral benefit claim form'
- include relevant information if part of the funeral costs were paid through a funeral plan
- provide a copy of the person's death certificate
- provide any other relevant invoices or receipts.

Medical expenses

If you are diagnosed with an asbestos-related disease and have less than two years life expectancy, reasonable medical expenses may be payable up to a total amount of 125 compensation units.

Once this amount has been reached, the expenses will be reviewed by the Asbestos Compensation Commissioner to ensure that appropriate treatment is being provided.

If you are diagnosed with an asbestos-related disease and have more than two years life expectancy (a non-imminently fatal disease), reasonable uncapped medical expenses may be payable.

You must use 'Form 3: Medical services claim form' to lodge each claim.

Where you have not paid a medical expense but have received an invoice, you must send that invoice (plus the completed claim form) to the Asbestos Compensation Commissioner within 10 business days. If you fail to meet this timeframe you may be liable for any late fees.

If you have paid for a medical service, you can seek reimbursement using the same form and attaching relevant receipts.

Traveling expenses

If you are medically required by a suitably qualified medical practitioner to travel for medical treatment for your disease, reasonable travel expenses may be payable.

Before traveling, you must contact the Asbestos Compensation Commissioner and provide medical evidence to ensure that the travel will be approved.

Where medically necessary and certified by a medical practitioner, the costs for an accompanying person may also be covered.

You must use 'Form 3: Medical services claim form'.

Counselings

Expenses for psychological consultations may be payable, where the consultations are:

- for the person with the compensable disease and are directly related to that disease
- deemed necessary by a medical professional.

Common law damages

Common law damages differ from statutory compensation under the scheme because at common law, a person must be able to prove that the disease resulted from negligence, breach of contract or breach of statutory duty by the employer.

If you have already received damages through common law for a particular asbestos-related disease, you are not eligible for compensation under the compensation scheme for that disease.

However, if the damages received were for a different asbestos-related disease, you may still be eligible for compensation under the scheme.

Where you have received a determination from the Asbestos Compensation Commissioner under the compensation scheme, you may still take action at common law. However, you must notify the Asbestos Compensation Commissioner in writing about the start of common law action, within 20 business days of commencing action. This notification also applies to a judgment or settlement at common law. You must use 'Form 8: Notice of common law action'.

If you receive lump sum compensation under the scheme, and go on to succeed at common law, you will be required to pay compensation amounts back to the scheme:

- if you receive more or the same amount of damages at common law as you received through the scheme, you must pay the scheme back the amount of compensation you received
- if you receive less at common law than what you have received under the scheme, you will be required to pay back what you have received at common law.

You will be advised of the amount you are required to pay back by the Asbestos Compensation Commissioner.

Statutory compensation under other laws

Compensation is not payable to you if you have already received compensation for the same asbestos-related disease under legislation in another place, or under the *Workers Rehabilitation and Compensation Act 1988* or under the *Workers Compensation Act 1927*.

If you receive compensation under other laws after receiving compensation under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, you may be required to re-pay an amount to the Asbestos Compensation Commissioner.

You must notify the Asbestos Compensation Commissioner in writing of receiving compensation through other legislation within 20 business days of receiving that compensation. You must use 'Form 7: Notice of receipt of compensation under other legislation form'.

Dispute resolution

Tasmanian Civil and Administrative Tribunal

The Tasmanian Civil and Administrative Tribunal (TASCAT) has the primary responsibility for determining disputes about asbestos compensation. The types of disputes that the Tribunal deals with include:

- liability for a claim
- issues concerning weekly payments such as the start, amount, reduction or end of payments
- payment of medical and other services
- reimbursement of travelling expenses.

The Tribunal holds arbitrated hearings to resolve any matters.

Referral to TASCAT

TASCAT has specific forms for referral of disputes. These forms are available at tascat.tas.gov.au - look for the Personal Compensation Stream.

You can contact TASCAT by phone on 1800 657 500 or email on tascat@tascat.tas.gov.au.

Employer obligations

Recreation and long service leave

Where a person with an asbestos-related disease is receiving weekly compensation payments from the Asbestos Compensation Commissioner, employers have certain obligations for annual recreation leave and long service leave entitlements.

If, during a period where weekly compensation payments would otherwise be payable, a recreational leave entitlement period occurs, the person must be given a similar period of leave on full pay by their employer. This must occur at some time within three months from the date of return to work, or at the termination of weekly payments if they do not return to work. Alternatively, the person may arrange to take the recreation leave during the period of incapacity.

Similar arrangements must be made for long service leave entitlements. These may also be taken at half pay.

If the person takes annual recreational leave or long service leave during a period of incapacity, they are not entitled to receive weekly payments during that time.

An employer must not cause or require a person to take annual recreational leave or long service leave during a period of incapacity for which weekly payments are payable to the person by the Asbestos Compensation Commissioner.

The levy

The asbestos compensation scheme is funded through a levy applied to workers compensation insurance premiums.

Those required under the *Workers Rehabilitation and Compensation Act 1988* to maintain an insurance policy, other than a domestic workers compensation insurance policy, are policyholders under the Act. Tasmanian State Service Agencies and other bodies to which the Tasmanian Risk Management Fund applies, and statutory authorities within the meaning of the *Government Business Enterprises Act 1995*, are also policyholders.

The levy is a percentage of the premium payable by the policyholder for insurance policies under the *Workers Rehabilitation and Compensation Act 1988*. The levy amount is to be paid to the licensed insurer.

Licensed insurers must then, within 20 business days after the end of each month, pay the Asbestos Compensation Commissioner all amounts received during that month and include a written statement setting out the levy amounts.

Each self-insurer must also pay the levy.

The relevant Minister may determine the amount of the levy each financial year.

Penalties for not paying the levy may be up to 20 penalty units.



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ISBN: 978 1 876712 9

