

TASMANIA

**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
REGULATIONS 2021**

STATUTORY RULES 2021, No. 81

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SCHEDULE 1 – AGE-RELATED PAYMENTS

**ASBESTOS-RELATED DISEASES
(OCCUPATIONAL EXPOSURE) COMPENSATION
REGULATIONS 2021**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

Dated 11 October 2021.

B. BAKER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Workplace Safety and Consumer Affairs

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Asbestos-Related Diseases (Occupational Exposure) Compensation Regulations 2021*.

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Part 1 – Preliminary

2. Commencement

These regulations take effect on
26 October 2021.

3. Interpretation

In these regulations –

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

application means any application made to the Commissioner or the Tribunal under the Act;

document includes –

- (a) a copy of a document; and
- (b) an audio tape or soundtrack or compact disc; and
- (c) a computer program or software and any other information recorded in or processed by a computer; and
- (d) a film, photograph, videotape or cinematographic film;

inspect includes the following, with or without the aid of equipment:

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- (a) view data or visual images embodied in any device;
- (b) listen to sounds embodied in any device;
- (c) reproduce sounds, data or visual images embodied in any device;

proof of evidence means a written statement containing the substance of an expert witness's evidence;

property includes real and personal property.

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Part 2 – Prescribed Amounts

PART 2 – PRESCRIBED AMOUNTS

4. Age-related units of compensation

- (1) For the purposes of section 72(2)(b) of the Act, the number of compensation units, for a person who is, on the commencement day, of an age specified in column 2 in Schedule 1, is the number specified opposite in column 3 of that Schedule.
- (2) For the purposes of section 72(4)(b) of the Act, the number of compensation units, for a person who is, on the day referred to in that provision, of an age specified in column 2 in Schedule 1, is the number specified opposite in column 3 of that Schedule.

5. Maximum funeral expenses amount

For the purposes of section 117 of the Act, the amount prescribed is the amount obtained by multiplying the basic salary by 14.

6. Maximum travelling expenses amount

For the purposes of section 120(1)(b) of the Act, the prescribed amount is an amount at the same rate and on the same terms as is prescribed from time to time for the equivalent travelling expenses in clause 3 of Part IV of the Tasmanian State Service Award made under the *Industrial Relations Act 1984* by the Tasmanian Industrial

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Commission constituted under section 5 of that
Act.

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Part 3 – Practice and Procedure of Tribunal

**PART 3 – PRACTICE AND PROCEDURE OF
TRIBUNAL**

7. Delay

- (1) If the Tribunal considers that the conduct of an application has been unduly delayed, the Tribunal, by giving notice to the parties, may make any of the following orders:
 - (a) an order fixing the date on which a hearing before the Tribunal is to occur;
 - (b) an order fixing a timetable for the completion of any proposed action by the parties and any consequential order if a person fails to comply with that timetable;
 - (c) any other order it considers appropriate.
- (2) In determining whether or not the conduct of an application has been unduly delayed, the Tribunal is to have regard to any time limits fixed by these regulations or the Act.
- (3) Any party may request that the Tribunal make an order under subregulation (1).

8. Discontinuation of application

A party may discontinue an application by giving notice in writing to –

- (a) the Tribunal; and

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(b) all other parties.

9. Discovery

- (1) A party, by notice in writing served on any other party, may request –
 - (a) discovery of any document or property that is relevant to the issues in dispute in any application; and
 - (b) a list of all documents discoverable under paragraph (a); and
 - (c) disclosure of the location of those documents.
- (2) A party on whom a notice is served under subregulation (1) is to comply with the notice within 10 business days after the date of service of the notice or within any other period agreed to by the parties.
- (3) The Tribunal may order a party who has not complied with subregulation (2) to make discovery under subregulation (1) within any period that the Tribunal considers appropriate.
- (4) If further documents that are discoverable under subregulation (1)(a) come into the possession, custody or control of a party who has already made discovery, that party is to make further discovery as soon as practicable.

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Part 3 – Practice and Procedure of Tribunal

- (5) Any document in respect of which privilege is claimed under any law is exempt from discovery.

10. Inspection of discovered documents

- (1) A party, by notice in writing served on any other party, may request inspection of any discovered document in the possession, custody or control of that other party.
- (2) A party on whom a notice is served under subregulation (1) is to provide, within 10 business days after the date of service of the notice or within any other period agreed to by the parties, a date, time and place for the inspection of the relevant document.
- (3) The Tribunal may order a party who has not complied with subregulation (2) to provide a date, time and place for the inspection of the relevant documents within any period that the Tribunal considers appropriate.
- (4) A notice under this regulation may be made in combination with a notice under regulation 9.

11. Inspection of property

On the application of any party, the Tribunal may make an order for the inspection of any property in the possession, custody or control of a party that is relevant to the issues in dispute in

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any application or as to which any question may arise.

12. Limitation of use of certain documents as evidence

- (1) A plan, model, film, audio tape, disk, soundtrack or other device in which sounds, data or visual images are embodied is not receivable at a hearing of the Tribunal unless –
 - (a) the parties agree, without further proof, after having been given an opportunity to inspect it –
 - (i) before the hearing at a time fixed by the Tribunal; or
 - (ii) if no time is fixed by the Tribunal, within a reasonable period before the hearing begins; or
 - (b) the Tribunal, at or before the hearing, otherwise orders.
- (2) A party, without notice to any other party, may apply to the Tribunal for an order for evidence of a plan, model, film, audio tape, disk, soundtrack or other device referred to in subregulation (1) to be received at the hearing without prior disclosure to any other party.
- (3) An application under subregulation (2) is to be made before the hearing.

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- (4) The Tribunal, after receiving an application under subregulation (2), may –
 - (a) make the order; or
 - (b) refuse to make the order; or
 - (c) direct that the application be served on another party before making an order under paragraph (a) or (b).

13. Witness not required to attend hearing

- (1) Subject to regulation 16, a witness is not required to attend a hearing of the Tribunal if –
 - (a) the party calling the witness serves an affidavit of the witness or, in the case of an expert witness, a proof of evidence, on the other parties not less than 10 business days before the date fixed for the hearing; and
 - (b) within 5 business days after the affidavit or proof of evidence is served, another party has not objected to the use of the affidavit or proof of evidence at the hearing.
- (2) An objection under subregulation (1)(b) is to be –
 - (a) in writing; and
 - (b) served on the other parties.

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- (3) An affidavit or proof of evidence served under subregulation (1) is receivable at the hearing if an objection has not been made under subregulation (1)(b).

14. Interrogatories

- (1) A party is not to interrogate any other party except with the leave of the Tribunal.
- (2) The Tribunal may only grant leave to interrogate if, in the opinion of the Tribunal, an interrogatory is likely to –
 - (a) narrow the issues in dispute; or
 - (b) shorten the proceedings.
- (3) A party is to answer an interrogatory by affidavit.

15. Orders against non-parties

- (1) The Tribunal may make any or all of the following orders against a person who is not a party to an application:
 - (a) an order for inspection of a document that is relevant to the issues in dispute in any application;
 - (b) an order authorising the observation or recording of, or the taking of a sample of or from, any property that is relevant to the issues in dispute in any application;

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- (c) an order that a person make discovery of any document or property that –
 - (i) is relevant to the issues in dispute in any application; and
 - (ii) is or has been in the possession, custody or power of that person;
 - (d) an order that a person answer on oath any interrogatory that is relevant to the issues in dispute in any application.
- (2) An order under subregulation (1) may be general or limited to a certain class of documents or property.

16. Witness required to attend hearing

- (1) A party who is served with an affidavit or proof of evidence under regulation 13(1)(a) and who has not objected under regulation 13(1)(b) may, within 5 business days after that service, request the person who made the affidavit or proof of evidence to attend at a hearing for the purpose of cross-examination.
- (2) A request under subregulation (1) is to be –
 - (a) in writing; and
 - (b) served on the other parties.

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PART 4 – MISCELLANEOUS

17. Matters to be proved by interstate person who is to continue to receive weekly payments

- (1) For the purposes of section 89 of the Act, the address and identity of a person to whom that section applies is to be proved by declaration made before a person with authority to administer oaths in the place where the declaration is made.
- (2) For the purposes of section 89 of the Act, the degree of incapacity of a person to whom that section applies is to be proved by providing a declaration or certificate by a medical practitioner.
- (3) For the purposes of section 89 of the Act, the prescribed interval at which a worker is to prove the matters in that section is an interval of not less than 12 months and not more than 13 months.

18. Investment by Public Trustee

For the purposes of section 101 of the Act, money paid to the Public Trustee under that Act is to be invested, applied or otherwise dealt with by the Public Trustee in accordance with the provisions of the *Public Trustee Act 1930*.

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Part 4 – Miscellaneous

19. Declaration of provisions of certain laws to be about damages for work-related injuries

For the purposes of the definition of a *State's legislation about damages for a work-related injury* in section 115(1) of the Act, each of the following laws of a State is declared to be, in relation to the State of which it is a law, the State's legislation about damages for a work-related injury:

- (a) *Workers Compensation Act 1951* of the Australian Capital Territory;
- (b) *Workers Compensation Act 1987* of New South Wales;
- (c) *Workplace Injury Management and Workers Compensation Act 1998* of New South Wales;
- (d) *Return to Work Act 1986* of the Northern Territory;
- (e) *Workers' Compensation and Rehabilitation Act 2003* of Queensland;
- (f) *Return to Work Act 2014* of South Australia;
- (g) *Accident Compensation Act 1985* of Victoria;
- (h) *Workplace Injury Rehabilitation and Compensation Act 2013* of Victoria;

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- (i) *Workers' Compensation and Injury Management Act 1981* of Western Australia.

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SCHEDULE 1 – AGE-RELATED PAYMENTS

Column 1	Column 2	Column 3
		Regulation 4
Item	Age	Number of units
1.	65 years or younger	360
2.	66 years	323
3.	67 years	291
4.	68 years	262
5.	69 years	236
6.	70 years	212
7.	71 years	191
8.	72 years	172
9.	73 years	155
10.	74 years	139
11.	75 years	126
12.	76 years	113
13.	77 years	102
14.	78 years	92
15.	79 years	83

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Column 1	Column 2	Column 3
16.	80 years or older	nil

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 October 2021.

These regulations are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) prescribe various matters for the purposes of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* including –
 - (i) compensation units; and
 - (ii) certain practices and procedures of the Tribunal; and
 - (iii) how certain moneys are to be dealt with by the Public Trustee; and
- (b) are made consequentially on the repeal of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Regulations 2011* under section 11 of the *Subordinate Legislation Act 1992*.