

**ASBESTOS DISEASE  
COMPENSATION  
WESTERN AUSTRALIA  
2011**

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## *ASBESTOS DISEASE COMPENSATION IN AUSTRALIA*

As Australia is a federation of States each with separate law making powers, laws governing compensation vary between the States. It should be noted that not only laws of procedure and compensation vary but also time limits for commencing claims vary from state to state.

The State in which a person has been exposed to asbestos will determine the laws which will apply and the entitlements to compensation. For example, Western Australia has a three year time limit in which to commence a claim from diagnosis with a "significant" asbestos disease while New South Wales has no time limits for commencing claims for compensation for asbestos disease and Queensland has a strict 12 month time limit. Therefore people who develop identical asbestos diseases will have different entitlements to compensation if they were exposed in different jurisdictions. For instance a person exposed in New Zealand will likely have extremely limited entitlements to compensation whereas a person exposed in Western Australia or New South Wales will likely have substantial entitlements for the same disease.

At present there are reasonably good entitlements to compensation for asbestos disease in all States of Australia.

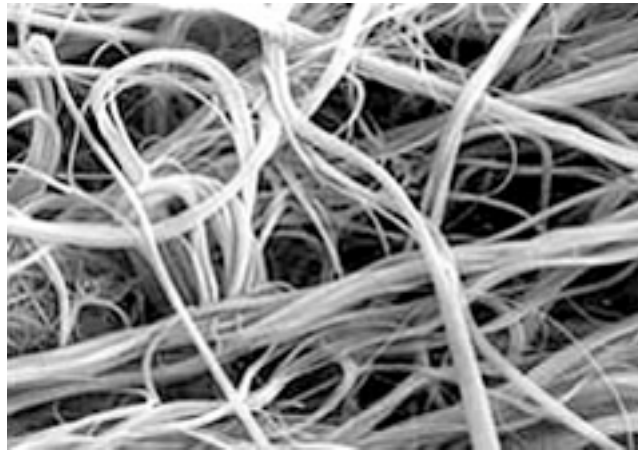
What follows is a general overview of asbestos compensation and diseases.

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## ASBESTOS – WHAT IS IT?

Asbestos is a commercial term. It does not describe a single mineral but a group of approximately 30 different fibrous minerals. The members of this group are all fibrous but differ chemically and structurally. The asbestos group of minerals is divided into the serpentine and the amphibole groups. The serpentines are characterised by long curly fibres while the amphiboles are needle-shaped and of a smaller diameter than the serpentines. The amphiboles are known to be much more harmful to health, and causative of mesothelioma, than the serpentines.

### *Serpentine Group*

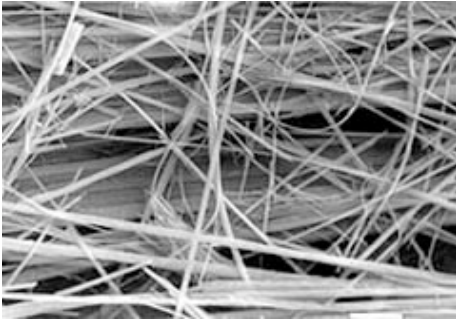


### *Chrysotile or white asbestos*

The serpentine group includes chrysotile (white asbestos). The amphibole group includes crocidolite (blue asbestos), amosite (brown asbestos), anthophyllite and tremolite. Of all asbestos types only chrysotile (white), crocidolite (blue) and amosite (brown) were mined or used commercially in Australia. Anthophyllite was mined and used extensively in Finland but not in Australia. The amphibole tremolite is often found as a contaminant in chrysotile and other minerals such as talc and vermiculite. Tremolite is often found with chrysotile and it has been hypothesised that it is tremolite contamination in chrysotile or white asbestos, rather than the chrysotile itself, that is responsible for mesothelioma although much evidence now links chrysotile with mesothelioma.

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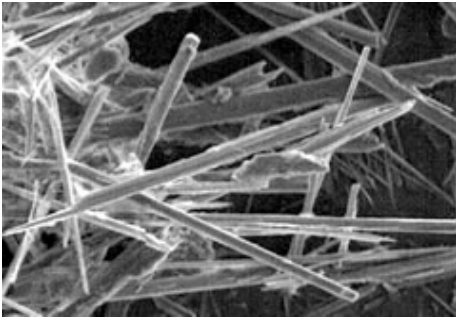
## *Amphibole Group*



*Crocidolite  
or blue asbestos*



*Tremolite*



*Anthophyllite*



*Amosite  
or brown asbestos*

The amphiboles, particularly crocidolite and amosite, are much more associated with mesothelioma than the serpentines. This is thought to be due to the needle-like shape and small diameter of the amphiboles which it is believed results in their tending to penetrate deeper into the lung and remaining there longer than chrysotile, which is more likely to dissolve in tissue fluid or be expelled from the lung.

Asbestos has been described in the past as the “magic mineral”. It is highly resistant to heat and acid, is an effective insulator against both electricity and sound and has high tensile strength, and as such has countless uses. It has been processed with cement to make wall and floor sheeting, mixed with water and applied damp as an insulation to boilers and pipes and used in friction material, such as brake pads. These were its main uses in Australia.

## ASBESTOS PRODUCTS

The following are some of the typical products that may contain asbestos:

1. Asbestos cement building products such as flat and corrugated sheets and asbestos cement pipes - these products were extensively used throughout Western Australia into the 1980s and of course are still present in many homes.
2. Asbestos insulation products frequently used in power stations and steam driven vessels - asbestos insulation products began to be phased out and replaced with substitutes in about the mid 1970s, however, old asbestos insulation already in place continued to be found and removed into the 1980s and in some instances the 1990s in Western Australia.
3. Friction materials such as brake and clutch linings - these products almost universally contained white asbestos or chrysotile.
4. Electrical switchboard backing sheets.
5. Floor tiles.
6. Asbestos reinforced plastics.
7. Battery boxes.
8. Asbestos millboard - used for insulating purposes including in air-conditioning systems.
9. Woven asbestos products such as rope, cloth, tapes, gloves and many other items.
10. Fire doors.

The list of products which contained asbestos however is virtually endless and extreme care should be taken when working with or around any product that could potentially contain asbestos.

Much of the asbestos commercially used in Western Australia was imported from South Africa or Canada although large quantities of asbestos were also mined in Australia at

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Wittenoom in Western Australia (where blue asbestos was mined) and in Northern New South Wales at mines at Baryugil and Barraba where white asbestos was mined.

### *ASBESTOS DISEASES*

By the 19th century in the United Kingdom a large number of workers were engaged in dusty processes in mines and factories. By 1898 factory work with asbestos had been

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identified in the United Kingdom as giving rise to an easily identifiable danger to health: (Factories and Workshops Annual Report, 1898).

The term asbestosis was coined in 1927 and by the 1950s and 1960s it was accepted that asbestos exposure was associated with mesothelioma and lung cancer. Various workplace asbestos exposure standards were enacted in Australia. This began with the Harmful Gases, Vapours, Fumes, Mists, Smokes and Dusts Regulations 1945 (Vict) which provided for a maximum workplace concentration of asbestos of 5 million particles per cubic foot of air. In 1969 the National Health and Medical Research Council (Aust) established a limit of 4 fibres per cubic centimetre of air. The 1945 standard equates roughly to 172 fibres per cubic centimetre of air so the 1969 standard was many times stricter than that of 1945. In 1977 in NSW the standard for workplace air was reduced to 2 fibres per cubic centimetre of air. This was adopted in Victoria in 1978. More stringent standards have since been adopted throughout Australia.

As the knowledge of the association between asbestos exposure and disease increased in the 20th century so too did the incidence of asbestos disease.

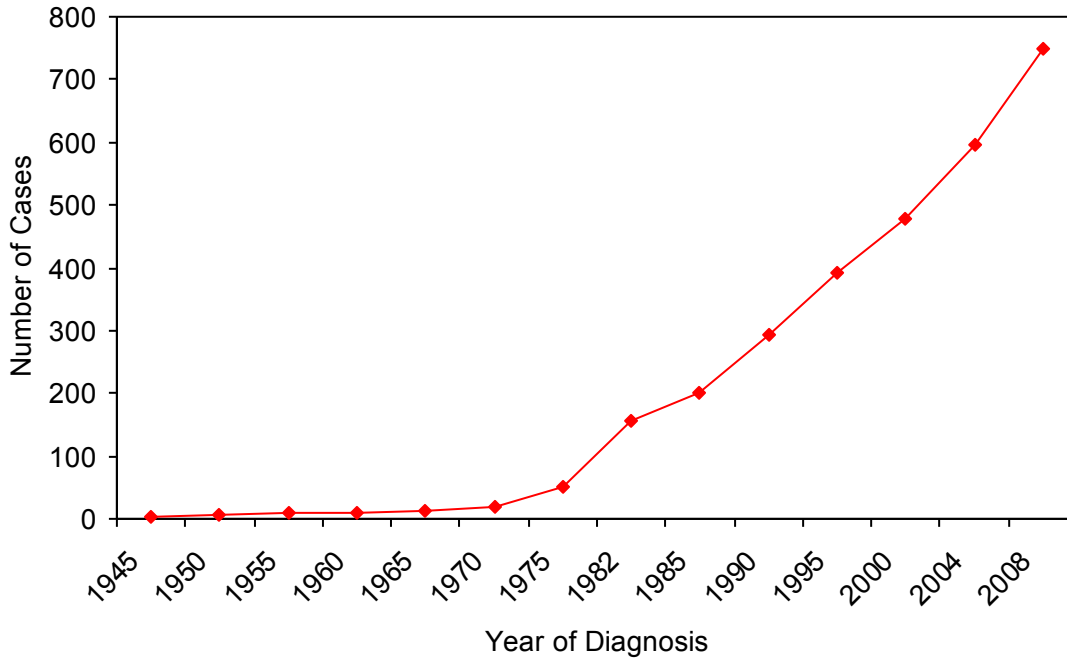
Asbestos disease is unlike most other types of compensable personal injury as the events which give rise to the injury, that is the exposure to asbestos, occur many years prior to the development of the injury or the injury becoming symptomatic. For instance, the average latency period, which refers to the period between first exposure to asbestos and development of disease, in the case of mesothelioma, is about 35 years. Asbestos also tends to cause conditions not caused by any other substances.

## ***MESOTHELIOMA***

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Asbestos disease is increasing at an alarming rate in Australia, this is particularly so for mesothelioma. The following graph illustrates this:

Incidence of Mesothelioma 1945 to 2008

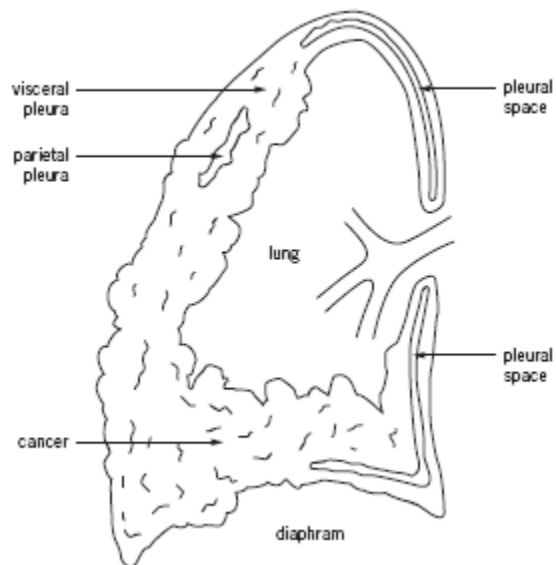


*The above graph is based on figures contained in Australian Safety & Compensation Council report "Mesothelioma in Australia – Incidence 1982 to 2004" dated March 2008*

It is thought that the incidence of mesothelioma in Australia will not peak until the year 2015 or 2020.

Mesothelioma is an incurable and extremely painful malignancy of the outer lining of the lung (the pleura) or the lining of the abdominal cavity (the peritoneum). The bulk of mesotheliomas affect the pleura. As the disease progresses the pleura or the peritoneum thickens from the thickness of cigarette paper to form a hard tumour mass often between 0.5cm and 1cm thick. This mass encloses and compresses the lung, in the case of pleural mesothelioma, and the intestines in the case of peritoneal mesothelioma, to the point of collapse. In the absence of asbestos exposure mesothelioma is said to be rare. There is no link between cigarette smoking and mesothelioma. The only other known cause of mesothelioma is erionite, a fibrous mineral found in Turkey.

## *Mesothelioma*



Mesothelioma is the most lethal of all asbestos disease. Unfortunately it is also one of the most prevalent. Of claims filed in the Dust Diseases Tribunal of NSW, a specialist court handling asbestos compensation claims, mesothelioma claims historically account for approximately fifty per cent of total claims filed.

The latency period between first exposure to asbestos and the onset of mesothelioma is rarely less than 20 years from first exposure and may be more than 50 years.

Of the various commercial types of asbestos mesothelioma is predominantly associated with exposure to the blue asbestos, crocidolite. Amosite is less potent in causing mesothelioma than crocidolite and generally it is thought that one needs a heavier exposure to chrysotile to cause mesothelioma compared with crocidolite and amosite.

Recently there has been some progress in the treatment of mesothelioma particularly with the chemotherapy drug Alimta which has been found to extend life expectancy in some cases. Some people who have been treated with Alimta are still alive years after diagnosis with mesothelioma. Other treatments are also being trialed.

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Another option for treatment of mesothelioma is a pleuropneumonectomy which is the surgical removal of the lung, the pleura and the diaphragm. It is a major operation. Whether it extends life span is unclear. Recently there has been an increased effort to find a cure for mesothelioma and an example of this is the establishment of the Bernie Banton Research Centre in Sydney and also the work carried out by the Lung Institute of Western Australia based at the Sir Charles Gairdner Hospital.

### *ASBESTOSIS*

Asbestosis is a chronic fibrotic interstitial lung disease which is asbestos-induced. It is a non-cancerous condition. Fibrosis is a scarring of the lung. Interstitial refers to the lung tissue itself. In asbestosis it is the lung tissue not the airways that is damaged. The scarring results from asbestos fibres penetrating the lung tissue and causing inflammation. If this process continues then further scarring results from the body's attempt to repair itself. The air sacs, alveoli, which allow oxygen to pass from the lungs into the bloodstream, become scarred and damaged. Asbestosis is sometimes referred to as fibrosing alveolitis. The scarring also causes stiffness in the lungs which can make breathing difficult. The stiffness arises because scar tissue is inelastic and can shrink. Breathlessness on exertion is the symptom of asbestosis.

Fibrotic changes in the lungs can be associated with various causes other than asbestos such as silica dust or animal dust exposure and rheumatoid arthritis. Exposure to silica dust, for instance arising from excavation work in rock with high silica content, can cause silicosis. Exposure to dusts from various birds can cause a fibrotic condition in the lung known as bird fanciers' lung.

However, asbestosis refers exclusively to asbestos-induced fibrosis of the lung. Asbestosis is usually diffuse in that it is usually found throughout the lower sections of both of the lungs, and not isolated. The fibrosis associated with asbestosis is often roughly equal in both lungs. As the disease progresses, the upper lobes may be affected.

Asbestosis is often a progressive disorder. Exertional breathlessness gradually worsens often over a period of years. As asbestosis increases the scarred part of the lung becomes shrunken and breathing becomes difficult.

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The damage to the lung's capacity may go unnoticed for years due to the lung's excess capacity. Breathlessness can progress from presence on exertion to its presence at rest. As the disease progresses the asbestosis sufferer becomes prone to other illnesses, such as bronchitis and pneumonia, and the heart has to work harder to force blood through the lungs. As a consequence, asbestosis sufferers with severe disease can die of heart failure.

As well as arising from causes other than asbestos exposure interstitial fibrosis may also be idiopathic, meaning that no cause can be determined. This condition is known as idiopathic pulmonary fibrosis or cryptogenic fibrosing alveolitis. However, idiopathic pulmonary fibrosis tends to be a very rapidly progressive condition whilst asbestosis tends to involve gradual deterioration so the two conditions can usually be distinguished.

The diagnosis of asbestosis however can be difficult to make particularly given the number of other possible causes of fibrosis in the lungs. The diagnosis is made by obtaining a history of asbestos exposure, radiological signs, lung function deficit and clinical signs such as inspiratory crackles and clubbing of the fingers and toes. As with all the asbestos-related diseases there is a significant time lag between exposure and onset of symptoms.

The first modern evidence of fibrotic pulmonary disorder in an asbestos worker was discovered in an autopsy performed by Dr Montague-Murray in England in 1899, and reported on in 1907.

It has been said that asbestosis, or at least severe asbestosis, is a disease of the past because increasing awareness about the dangers of asbestos inhalation and some tightening in asbestos exposure regulations in the 1960's and 1970's reduced exposure to levels at which whilst mesothelioma was still a significant risk, asbestosis was not.

However, the advent of high resolution CT scanning in the 1990s which shows much more detail of the lung as compared to a simple chest x-ray has given respiratory specialists much more information to make the diagnosis of asbestosis and in fact the diagnosis of asbestosis is probably on the increase.

#### ***ASBESTOS RELATED PLEURAL DISEASE***

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Like mesothelioma, the incidence of asbestos related pleural disease has also increased in recent years.

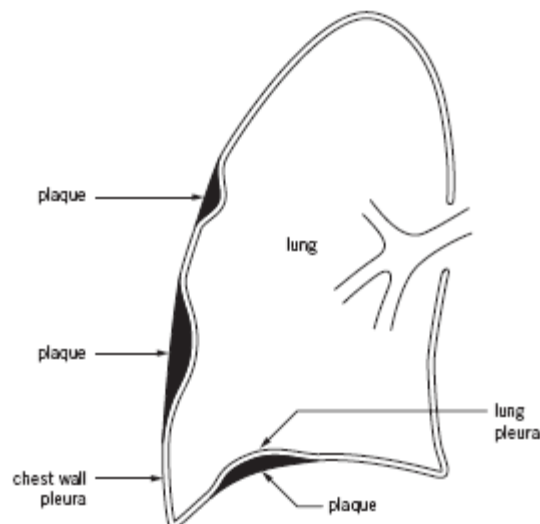
### *The Pleura*

The pleura is a thin membrane, a double layer of thin tissue, which lines the outside of the lung surface (the visceral pleural) and the inside of the chest wall (the parietal pleura). The parietal pleura covers the visceral pleura. There is normally a small amount of fluid between the 2 layers which facilitates the expansion of the lung as the chest expands. Unlike mesothelioma, asbestos related pleural disease is a benign condition.

### *Pleural Plaques*

As a result of asbestos exposure pleural plaques can develop. These are patches of fibrous thickening on the pleural membrane which can progress slowly and can calcify. The calcification makes pleural plaques very apparent on x-rays and they appear radiologically generally at least 10 years after first exposure to asbestos with the extensiveness of plaquing generally related to duration and intensity of exposure. Pleural plaques generally cause no measurable impairment of lung function or affect an individual's general well-being unless the plaques are very extensive in which case the plaques can restrict lung function. Pleural plaques can also cause chest pain.

### *Pleural Plaques*



Pleural plaques are generally seen as a marker of past exposure to asbestos. Even though pleural plaques do not usually cause any disability, it is important that persons with pleural plaques register their condition with us so as to ensure they are kept abreast of changes in the law. Presently, Western Australian workers' compensation laws do not recognise asbestos pleural disease including pleural plaques as a compensable condition but there is legislation currently before Parliament to amend this law.

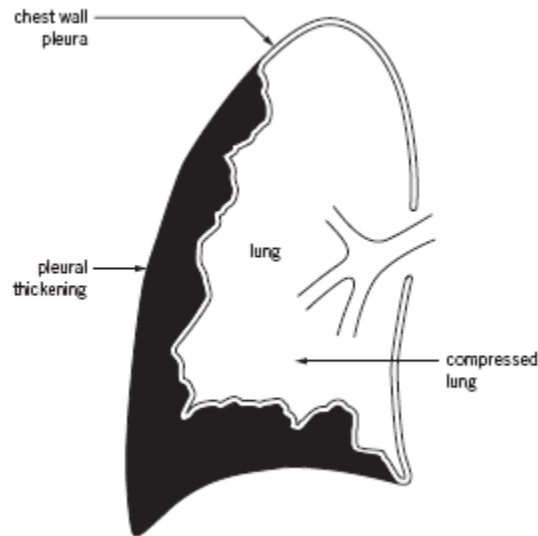
Pleural plaques are the most common form of asbestos disease. Chest pain as a result of pleural plaques can be very severe and can in certain circumstances entitle a person to very substantial compensation but care needs to be taken to establish that the plaques are the cause of the pain as of course there are other causes of chest pain. In addition pleural plaques can be very extensive and interfere or restrict the function of the lung causing breathlessness on exertion and if this is the case can also entitle a person to compensation.

### *ASBESTOS RELATED PLEURAL THICKENING*

Asbestos related pleural thickening is a fibrous layer of tissue covering a significant portion of the pleura. The thickening can lead to a restriction in lung function due to constriction of the lung. Pleural thickening may be caused by agents other than asbestos, tuberculosis used to be a common cause. Persons with pleural thickening may be entitled to compensation particularly if the thickening causes restriction in lung function or chest pain.

### *Asbestos Related Pleural Thickening*

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Pleural thickening is thought by some respiratory specialists to be caused by a pleural effusion which is the leakage of fluid into the space between the visceral and parietal pleura. The effusion may cause extreme chest pain. The effusion can cause pleural thickening. A talc pleurodesis may be carried out to prevent further effusions. This involves the insertion of talc or some other agent into the chest wall to adhere the parietal and visceral pleurae, obliterating the pleural cavity and leaving no area for fluid to reaccumulate.

## ***LUNG CANCER***

Lung cancer is a cancer originating in the airways of the lung or in the parenchyma, which is the tissue of the lung. Lung cancer is often fatal although in some cases can be successfully treated. Cigarette smoking is generally thought to be the major risk factor although there are thought to be other causes such as asbestos exposure. The casual link between asbestos and lung cancer was identified by the publication in 1955 of the report of Richard Doll, "Mortality from Lung Cancer in Asbestos Workers" in the British Journal of Industrial Medicine.

Cigarette smoke and asbestos play a synergistic or multiplicative role in the development of lung cancer. Some studies have shown that those who smoke cigarettes and have been

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exposed to asbestos have a fifty fold increased risk of lung cancer over the non asbestos and cigarette exposed population while those who have smoked cigarettes but who have had no exposure to asbestos have only an eleven fold increased risk.

The latency period between exposure to asbestos and development of lung cancer is generally believed to be approximately 15 to 25 years. Lung cancer contributed to by asbestos exposure alone tend to be found in the lower lobes of the lung, while those caused by cigarette smoking alone are usually found in the upper lobes.

Lung cancer is probably an asbestos condition which is under-compensated or under-notified. Because of its strong association with cigarette smoking the connection with asbestos is likely overlooked in some cases.

Excellent compensation entitlements can be available for those with lung cancer and it is important for anyone who has been exposed to asbestos and who has developed lung cancer to investigate a connection between the two and compensation entitlements.

### **HOW DO I KNOW IF I HAVE AN ASBESTOS CONDITION?**

We are regularly contacted by many persons who are concerned about whether they have an asbestos disease. These are generally people who have been exposed to asbestos in the past, often quite heavily, but have never been diagnosed with any asbestos condition as yet.

It is the case that asbestos exposure usually takes years to develop into an asbestos condition. Sometimes a person may have had the odd chest x-ray in the past which was clear but as they get a bit older they notice symptoms of shortness of breath. This can simply be part of the ageing process or connected to weight gain or some other cause. There may be no connection with asbestos disease whatsoever.

Then again, asbestos disease causes shortness of breath. It also causes chest pain. These are symptoms that should not be ignored and should be discussed with a general

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practitioner who can advise what type of test should be carried out to check for the presence of asbestos disease.

As a starting point we recommend consulting your general practitioner about having a chest x-ray. This is a fairly simple and inexpensive test and if it is clear there is usually no need to investigate further, although a GP will advise in respect of this. If there is any sign of asbestos disease on the chest x-ray a CT scan and often a high resolution CT scan is ordered. Again, this is something the GP can refer a patient for.

If a person has been exposed to asbestos in the past but doesn't seem to have any symptoms of significant shortness of breath on exertion or chest pain perhaps the best thing to do is to simply advise the GP that there has been asbestos exposure in the past and ask whether a simple chest x-ray, just as a "base line" investigation, is warranted.

It is important to note that most people exposed to asbestos do not develop any asbestos condition. Unfortunately, the number of persons exposed to asbestos in the past are so enormous that even with only a small percentage developing asbestos disease, the numbers diagnosed each year are large and increasing.

Even if there is no diagnosis with an asbestos disease, the fact of asbestos exposure can still be registered with us. Registering asbestos exposure can assist in protecting future compensation entitlements as the time between the exposure to asbestos and the development of an asbestos disease is usually between 20 and 50 years so as time goes by important details can become more difficult to recall. You can register your exposure to asbestos with us by completing the next page and returning it to us at PO Box 3055, Perth Adelaide Terrace, Western Australia, 6832 or please feel free to contact us on 08 9325 6920.

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**REGISTRATION FORM**

**TURNER FREEMAN LAWYERS**

**Name:** .....

**Address:** .....

.....

**Date of Birth:** ..... **Telephone:** .....

**HAVE YOU BEEN DIAGNOSED WITH AN ASBESTOS DISEASE  
YES / NO**

**If yes, what is the nature of the disease?**  
.....

**CIRCUMSTANCES OF EXPOSURE**

**Place(s) where exposed or if home renovating, address where renovations occurred:**  
.....  
.....

**Employer (if employment based exposure) / Occupier of site (if contractor):**

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If a person does have disability as a result of an asbestos disease there is usually an entitlement to lump sum compensation. Each state in Australia and each overseas jurisdiction has different means of compensating persons with asbestos disease and different limitation periods for commencing claims. The appropriate jurisdiction depends on the place of exposure.

### ***WESTERN AUSTRALIA***

For persons exposed to asbestos in Western Australia, two main compensation entitlements are available. The first is a workers' compensation claim filed with your employer's insurer or if your employer is no longer in existence or your employer's insurer is unknown then the Insurance Commission of Western Australia, commonly known as ICWA. This is in respect of persons exposed to asbestos in paid employment. The second entitlement is a court claim for damages which can be against an employer or manufacturer of asbestos products.

### ***WORKERS' COMPENSATION BENEFITS***

Generally speaking greater entitlements are available through court claims than through workers' compensation claims.

However, a person's right to bring a common law claim against his or her employer is restricted under the *Workers Compensation and Injury Management Act 1981 (WA)*. A person must be assessed by a Medical Panel convened by WorkCover WA as having at least a 15% impairment before he or she is entitled to bring common law proceedings. The amount of damages is also restricted at common law if a person is assessed as having between 15% and 25% impairment. Damages are unrestricted at common law where a person has more than a 25% impairment.

For some persons a workers' compensation claim may be their only entitlement to damages where for example due to the circumstances of their exposure negligence cannot be proven. Workers' compensation claims are a no fault scheme meaning it is not necessary to prove negligence against a person's employer or the manufacturers of the asbestos products. Therefore, although the compensation is less through a workers' compensation claim it provides a risk free alternative for persons who cannot pursue damages at common law.

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## ***COURT CLAIMS***

Common law claims are claims for lump sum damages for negligence or breach of a statutory duty, usually brought against a former employer or a manufacturer.

Generally speaking greater entitlements are available through court claims for persons who have been exposed to asbestos in Western Australia and develop an asbestos disease than through workers' compensation claims.

For Western Australians exposed to asbestos outside of employment but in the state of Western Australia, such as in self-employment, a court claim for damages would be the only avenue for compensation and significant lump sum compensation can be obtained. For example, housewives with asbestos disease who were exposed to asbestos from their husband's work clothes could have a claim for damages against their husbands' employer who exposed them to asbestos or a manufacturer of the asbestos products which were the source of the exposure. Self-employed carpenters with asbestos disease usually have strong claims against the manufacturers of the asbestos cement fibro products they used.

## **TIME LIMITS**

Common law claims in Western Australia are subject to strict time limits. A claim for an asbestos disease must be commenced within 3 years of when a person develops a "significant" asbestos disease. The Court may extend the time in which a claim can be brought by a further 3 years in certain circumstances.

A claim under the *Fatal Accidents Act* by a dependant (where a person has died from a dust disease) must be commenced within 3 years of the asbestos disease sufferer's death.

Importantly, a person exposed to asbestos should seek advice about compensation immediately after diagnosis to ensure their entitlements to compensation are protected.

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## TYPES OF DAMAGES AVAILABLE

If a claim is commenced in a person's lifetime, damages for pain and suffering and for loss of expectation of life are available, even if the claim is not completed before the person dies. However, if a claim is not commenced in a person's lifetime, these damages are not available in any later claim brought. It is therefore important that claims are commenced as soon as possible.

Damages are also available for economic loss (where a person can no longer work because of their dust disease), past and future out of pocket expenses and for the value of the care a person needs from their family as a result of their illness.

## RECENT DEVELOPMENTS IN WESTERN AUSTRALIA

In relation to court claims there have been promising developments in the law in Western Australia in recent years.

Firstly, legislation has been enacted which will allow damages for pain and suffering (general damages) in asbestos disease cases to survive a person's death if a person dies before a court claim is completed and the asbestos disease causes demise. This brings Western Australia in line with other States of Australia such as New South Wales, Victoria, South Australia and Queensland.

Secondly, where a person dies of an asbestos disease and a dependency action is brought under the *Fatal Accidents Act* by for example a lost one's widow the recovery of damages through the death of that person is now calculated without reference to any amount of damages awarded to the estate. Before, this vital piece of legislation was enacted it was the case that any damages recovered as a part of the estate action for pain and suffering and loss of expectation of life was taken into account and essentially deducted from damages awarded to a dependant.

Thirdly, as discussed above there is currently legislation before Parliament proposing to amend the workers' compensation legislation to include asbestos related pleural disease including pleural plaques and pleural thickening as compensable conditions. This will be a very important step to ensuring Western Australians are appropriately compensated.

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## **SPECIAL LAWS IN OTHER STATES**

Despite the above Western Australia does lag behind other States, particularly New South Wales, South Australia and Victoria in relation to special laws for court claims for asbestos disease.

### **Provisional Damages**

In some States of Australia including New South Wales, South Australia and Victoria claims can be commenced on a provisional damages basis or a full and final damages basis. An award of provisional damages permits a claimant to make a claim for the dust disease they are now suffering from and a further claim in the event that they later develop another, different, asbestos disease.

Western Australia is yet to enact a similar law and therefore, if a person has been exposed to asbestos in Western Australia he or she can only bring a claim on a full and final basis and will be prevented from bringing further proceedings in the future should he or she be diagnosed with another asbestos disease.

If you have been exposed to asbestos in more than one State in Australia, say for example Western Australia and New South Wales you would be able to bring a provisional damages claim with respect to your New South Wales exposure. Therefore it is important that you obtain advice from your lawyer about whether you are entitled to commence your claim on a provisional damages basis and again this will be determined by where your exposure to asbestos occurred.

### **Third Party Care Claims**

This head of damage was formerly known as *Sullivan v. Gordon* damages or damages for services provided to a third party. These damages were awarded in circumstances where a person cared for a loved one who was a child, sick or elderly and then developed an asbestos disease and could no longer provide care and assistance to their loved one. The cost of replacing those services could be claimed as a part of the court claim.

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Unfortunately the High Court decision of *CSR Limited v. Eddy* abolished these damages but certain States of Australia including New South Wales, South Australia, Victoria, ACT and most recently Queensland have enacted legislation to make these damages available.

### **Dust Diseases Tribunal of New South Wales**

In 1989, New South Wales created a specialist court called the Dust Diseases Tribunal. This court has all the powers of the Supreme Court of New South Wales but its jurisdiction is limited to dust diseases and in practical terms to asbestos disease cases.

Special procedures have been set in place in the Dust Diseases Tribunal to allow cases to be heard quickly and efficiently. From the time of filing a claim in the Dust Diseases Tribunal it has been the case that claims for mesothelioma, have been completed in as short a time as 2 weeks.

As many persons with asbestos disease have been exposed to asbestos in various States around Australia, the Dust Diseases Tribunal has heard cases in respect of persons suffering from mesothelioma in Western Australia and indeed has visited the State and taken evidence in hospitals and at bedsides of those with mesothelioma.

### **Recent developments to the Dust Diseases Tribunal of New South Wales**

In 2004 there was an extensive inquiry undertaken in New South Wales into the steps taken by the James Hardie companies to separate its various business entities and set up a trust fund to pay out court claims for damages arising from use of James Hardie products. This trust fund was found to be inadequate and subsequent negotiations lead to this trust fund being substantially topped up.

As part of that inquiry and negotiations that followed new procedures were introduced into the Dust Diseases Tribunal which provided for a mediation process to be undertaken between parties to a claim before any matter will be dealt with by the judges of the Dust Diseases Tribunal. This is designed to reduce legal costs. This new procedure came into effect from 1 July 2005.

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**ENTITLEMENTS IN OTHER STATES OF AUSTRALIA**

Other States of Australia also have special laws and special procedures for dealing with claims for those with asbestos disease. Recently the Northern Territory abolished time limitation periods for lodging court claims for asbestos disease. South Australia has created a special list in the District Court of South Australia to deal with asbestos claims and has quite extensive legislation specifically in respect of asbestos disease cases.

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Generally speaking in all States of Australia reasonable compensation entitlements are available. Many persons are exposed to asbestos in various States and may have different entitlements under different States' laws.

It is important that anyone exposed to asbestos seek advice quickly as time limits generally apply to bringing claims (except for Northern Territory and New South Wales exposure). Even in respect of exposure in these States it is important to seek advice regarding compensation as soon as possible after diagnosis.

### COMPENSATION FOR ROYAL AUSTRALIAN NAVY MEMBERS

It is unfortunately the case that many members of the Royal Australian Navy have developed asbestos disease. Up until at least the mid 1970's all of the major vessels in the Royal Australian Navy used asbestos based insulation materials as an insulating agent around steam pipes, boilers and other areas of the ships and often limpet asbestos was used as a fire retardant on bulkheads.

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Steam pipes ran throughout the ships, not just in engine and boiler room spaces and, this resulted in virtually all servicemen who served on major vessels having some exposure to asbestos and being at risk of developing asbestos related conditions.

Three main compensation entitlements exist for Royal Australian Navy members who develop asbestos disease and these can be set out as follows:-

- (a) A claim can be lodged with the Department of Veterans' Affairs (DVA) for payment of a disability pension and award of medical benefits (Gold Card).
- (b) A claim with the Military Compensation Scheme (MCRS) can be lodged for lump sum compensation.
- (c) A court claim for damages for lump sum compensation can be commenced against Comcare, which is a statutory body liable for the common law asbestos liabilities of the Commonwealth, including the Department of Defence.

In relation to a claim with DVA for a disability pension it is rarely the case that significant points, if any, are awarded by DVA for benign asbestos disease such as pleural plaques or asbestosis. These conditions may be accepted as service related, but rarely are points awarded so rarely does a benign asbestos related condition contribute significantly towards any disability pension.

In relation to mesothelioma because this can be caused by small quantities of asbestos exposure an application for a disability pension is usually accepted as well as a Gold Card for medical treatment.

In relation to a claim with MCRS for military compensation the lump sum which can be recovered through this scheme is usually less than what can be recovered through a court claim for damages directly against Comcare. Because the Royal Australian Navy fleet was based at Garden Island in Sydney a claim against Comcare for a Royal Australian Navy member can usually be brought in a special Tribunal in Sydney called the Dust Diseases Tribunal. This Tribunal (which is an informal court), has special procedures for asbestos disease compensation claims. In addition because the fleet was based in Sydney as long as a claim is commenced in the Dust Diseases Tribunal there is generally no time limit that

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applies to commencing court proceedings for those who served in the Navy and were exposed to asbestos. However if service in the Navy was confined to one particular state – say a shore base in Victoria, the time limit that applies in that state would apply to the commencing of court proceedings, so the fundamental rule that a claim for asbestos disease compensation should be investigated immediately applies to Navy cases as well as any other type of case.

Generally speaking there are excellent lump sum compensation entitlements available in a claim in the Dust Diseases Tribunal for those who served in the Navy and have significant asbestos related disease.

In addition a claim can be completed on the basis that a person is compensated just for their current asbestos related disease (in the case of a benign asbestos disease such as asbestos related pleural disease or asbestosis), and a further court claim can be brought in the future if asbestos related cancer results. As DVA rarely awards any points towards a disability pension for benign asbestos disease there is rarely any impact on a DVA disability pension upon receipt of lump sum compensation through court proceedings. This however needs to be checked in each case.

## **OVERSEAS JURISDICTIONS**

### ***UNITED KINGDOM***

United Kingdom compensation entitlements have been very similar to Australian entitlements. There are procedural differences between England and Wales, Scotland and Northern Ireland but generally in each jurisdiction reasonable compensation entitlements have been available.

Because of the large migration of persons from the United Kingdom to Australia many persons in Australia with asbestos disease must lodge claims in the United Kingdom and generally compensation has been available but can take much longer to recover than under the various Australian systems. Strict time limits apply in respect of exposure to

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asbestos in the United Kingdom and it is essential that persons seek advice about compensation entitlements as soon as possible after diagnosis otherwise entitlements can be prejudiced.

### ***RECENT DEVELOPMENTS IN THE UNITED KINGDOM***

It was the case until fairly recently that persons with simple pleural plaques but no disability were able to obtain lump sum compensation in the United Kingdom. This could be done on the basis that they could sue again in the event of developing a more serious asbestos disease such as asbestosis or mesothelioma. Recently this has been overturned and persons with simple pleural plaques are no longer entitled to lump sum compensation in the United Kingdom.

The incidence of asbestos disease is quite high in the United Kingdom and there are a variety of compensation entitlements available and it is most important that a person seeks expert advice regarding United Kingdom compensation entitlements as soon as possible after diagnosis.

### ***NEW ZEALAND***

Victims of asbestos disease, and particularly mesothelioma, caused by exposure in New Zealand have rights to compensation with the New Zealand Accident Compensation Corporation which provides a form of no-fault accident compensation payments. The right to bring a court claim for damages is very limited and basically non-existent in New Zealand. Generally the only entitlements to compensation in New Zealand are those available from the Accident Compensation Corporation (ACC) and particularly for those exposed to asbestos in New Zealand but who have moved overseas and are then diagnosed the entitlements from ACC are limited but have improved somewhat in recent years.

### ***RECENT DEVELOPMENTS IN NEW ZEALAND***

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Recently lump sum compensation for certain asbestos injuries are now available through the New Zealand compensation scheme, the ACC. This is particularly the case with mesothelioma.

For anyone exposed to asbestos in New Zealand the exposure can be registered and the condition can be advised of to the ACC but the condition needs to be of a certain severity before significant compensation is recovered.

## **SUPPORT FOR SUFFERERS OF ASBESTOS DISEASE**

### ***CLIENT SUPPORT***

In 2009, Turner Freeman introduced a free client support service.

Many clients of Turner Freeman have a need for social and emotional support as well as questions regarding the Government benefits and medical care available to them.

Tilly Ryan is our Client Relations and Support Facilitator and is available to assist you in this regard. Tilly is experienced in asbestos litigation and also has an understanding of the difficulties faced by those with significant personal injury. This service is provided at no extra cost to our clients.

Please feel free to contact Tilly if you, your family or carers would like information on social and emotional support.

**1800 683 928 (toll free)**

**0407 194 198**

**tilly.ryan@gmail.com**

Tilly's services are complementary to that offered by the asbestos support groups which are detailed below. Tilly can put you in contact with appropriate support groups and other Government bodies for example who can provide assistance to you.

### ***SUPPORT GROUPS***

#### ***Lung Institute of Western Australia ("LIWA")***

LIWA was founded in 1999 and is a registered charity who is dedicated to research into lung diseases including asbestos diseases and to supporting the respiratory community.

LIWA holds a support group meeting on the first Wednesday of each month at the Respiratory Medicine Library of the Sir Charles Gairdner Hospital. The support group is called LIFE (Lung Information & Friendship for Everyone) and has regular speakers on the issues which face people who suffer from lung diseases or respiratory problems.

For details of these meeting or becoming a member please either contact the LIWA office on 08 9346 3198 or visit its website at [www.liwa.uwa.edu.au](http://www.liwa.uwa.edu.au)

### **OUR PEOPLE**

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We have a team of diligent and proactive professionals who listen to your concerns and provide answers promptly. Our team are proud of the reputation we have developed for trusted, specialised services in asbestos litigation representing sufferers of mesothelioma, asbestosis, pleural plaques and pleural thickening as well as in the fields of personal injury, road accidents, workplace accidents, slips and trips and victims of crime



Kacey Wuelfert  
Partner

Asbestos litigation representing sufferers of mesothelioma, asbestosis, pleural plaques and pleural thickening.



Erwin Sohn  
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Personal injury, road accidents, workplace accidents, slips and trips and victims of crime.

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