

**Authorised Version No. 004**  
**Asbestos Diseases Compensation Act 2008**

**No. 69 of 2008**

Authorised Version incorporating amendments as at  
1 July 2014

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1 Purposes	1
2 Commencement	1
3 Definitions	1
<b>PART 2—PROVISIONAL DAMAGES FOR ASBESTOS-RELATED CONDITIONS</b>	<b>3</b>
4 Provisional damages for asbestos-related conditions	3
5 Only one subsequent award of damages for asbestos-related condition permitted	4
6 Regard may be had to initial award of damages	4
7 Regard must be had to legal costs incurred in initial action	4
8 Transitional provision	5
<hr style="border-top: 3px double #000;"/>	
<b>ENDNOTES</b>	<b>7</b>
1. General Information	7
2. Table of Amendments	8
3. Explanatory Details	9



---

**Authorised Version No. 004**  
**Asbestos Diseases Compensation Act 2008**  
**No. 69 of 2008**

Authorised Version incorporating amendments as at  
1 July 2014

**The Parliament of Victoria enacts:**

**PART 1—PRELIMINARY**

**1 Purposes**

The main purposes of this Act are—

- (a) to permit the awarding of provisional damages to persons suffering from asbestos-related conditions; and
- (b) to amend the **Accident Compensation Act 1985** in relation to proceedings relating to asbestos-related conditions; and
- (c) to amend the **Wrongs Act 1958** in relation to dependants' claims for damages arising from deaths caused by dust-related conditions.

**2 Commencement**

This Act comes into operation on the day after the day on which it receives the Royal Assent.

**3 Definitions**

(1) In this Act—

*asbestos-related condition* means—

- (a) asbestosis; or
- (b) asbestos induced carcinoma; or
- (c) asbestos-related pleural diseases; or
- (d) mesothelioma;

Asbestos Diseases Compensation Act 2008  
No. 69 of 2008  
Part 1—Preliminary

s. 3

---

***injured person*** means a person who is suffering from, or has suffered from, an asbestos-related condition;

***subsequent action*** means an action for a subsequent award of damages for an asbestos-related condition;

***subsequent award*** has the meaning set out in section 4.

- (2) In this Act, a condition evidenced solely by the presence of pleural plaques is not an asbestos-related condition.
-

## PART 2—PROVISIONAL DAMAGES FOR ASBESTOS-RELATED CONDITIONS

### 4 Provisional damages for asbestos-related conditions

If it is proved or admitted in an action for damages in respect of an asbestos-related condition that the injured person may at some time in the future develop another asbestos-related condition wholly or partly as a result of the act or omission giving rise to the cause of action, the court may—

- (a) award, in the first instance, damages for the asbestos-related condition assessed on the assumption that the injured person will not develop another asbestos-related condition; and
- (b) award damages at a future date if the injured person does develop another asbestos-related condition (the *subsequent award*).

#### Note

A claim by an injured person for damages for an asbestos-related condition may involve an injury to which—

- (a) the **Workers Compensation Act 1958** applies, if the injury arises out of, or in the course of, the injured person's employment before 4 p.m. on 31 August 1985;
- (b) the **Accident Compensation Act 1985** applies, if the injury arises out of, or in the course of, or was due to the nature of, the injured person's employment on or after 4 p.m. on 31 August 1985 but before 1 July 2014;
- (ba) the **Workplace Injury Rehabilitation and Compensation Act 2013** applies, if the injury arises out of, or in the course of, or was due to the nature of the injured person's employment on or after 1 July 2014;
- (c) the **Wrongs Act 1958** applies, if the injury did not arise out of or in the course of, or was not due to the nature of, the employment of the injured person.

Note to s. 4  
amended by  
No. 67/2013  
s. 649(Sch. 9  
item 1).

**5 Only one subsequent award of damages for asbestos-related condition permitted**

If a payment of provisional damages has been made to an injured person in respect of an asbestos-related condition only one subsequent award of damages for another asbestos-related condition can be made to that person.

**6 Regard may be had to initial award of damages**

If a payment of provisional damages has been made to an injured person for an asbestos-related condition, a court may have regard to those damages when assessing damages to be awarded in a subsequent action for damages for another asbestos-related condition suffered by that person.

**7 Regard must be had to legal costs incurred in initial action**

- (1) If a payment of provisional damages has been made to an injured person for an asbestos-related condition, a court or a registrar of a court must have regard to the legal costs incurred in respect of the action for those damages (the *initial action*) when assessing the amount to be awarded as legal costs in a subsequent action for damages by that person for another asbestos-related condition.
- (2) The purpose of subsection (1) is to ensure that legal costs awarded in a subsequent action are not in respect of work undertaken for the purposes of the initial action.
- (3) In considering any possible duplication of legal costs, the court or registrar must have regard to the following factors—
  - (a) any work undertaken in the initial action—
    - (i) to identify the party or parties to be named as defendants; and

- 
- (ii) to identify the circumstances of the injured person's exposure to asbestos; and
  - (iii) in relation to the negligence or breach of duty of the party or parties to be named as defendants; and
  - (iv) as to the relationship and causal nexus between the injured person's condition and the exposure to asbestos; and
- (b) any other factors that the court or registrar considers appropriate.

## **8 Transitional provision**

- (1) This Act applies to causes of action arising and actions commenced before or after the commencement of this Act.
  - (2) However subsection (1) does not apply to an action commenced before the commencement of this Act if—
    - (a) the hearing of the action had commenced before the commencement of this Act; or
    - (b) damages were awarded or a settlement reached (other than for provisional damages) in that action before that commencement.
-

Asbestos Diseases Compensation Act 2008  
No. 69 of 2008

s. 9

Pt 3 (Heading  
and ss 9–11)  
repealed by  
No. 69/2008  
s. 11.

---

*	*	*	*	*
---	---	---	---	---

Pt 4 (Heading  
and ss 12–14)  
repealed by  
No. 69/2008  
s. 14.

*	*	*	*	*
---	---	---	---	---

---

---



---

## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 9 October 2008*

*Legislative Council: 30 October 2008*

The long title for the Bill for this Act was "A Bill for an Act to permit the awarding of provisional damages to persons suffering from asbestos-related conditions, to amend the **Accident Compensation Act 1985** in relation to actions relating to asbestos-related conditions, to amend the **Wrongs Act 1958** in relation to dependants' claims for damages arising from deaths caused by dust-related conditions and for other purposes."

The **Asbestos Diseases Compensation Act 2008** was assented to on 25 November 2008 and came into operation on 26 November 2008: section 2.

Asbestos Diseases Compensation Act 2008  
No. 69 of 2008

Endnotes
----------

---

## 2. Table of Amendments

This Version incorporates amendments made to the **Asbestos Diseases Compensation Act 2008** by Acts and subordinate instruments.

---

### **Asbestos Diseases Compensation Act 2008, No. 69/2008**

<i>Assent Date:</i>	25.11.08
<i>Commencement Date:</i>	S. 11 on 25.11.09: s. 11; s. 14 on 25.11.09: s. 14
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Asbestos Diseases Compensation Act 2008</b>

### **Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013**

<i>Assent Date:</i>	12.11.13
<i>Commencement Date:</i>	S. 649(Sch. 9 item 1) on 1.7.14: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Asbestos Diseases Compensation Act 2008</b>

---

Asbestos Diseases Compensation Act 2008  
No. 69 of 2008

**Endnotes**

---

**3. Explanatory Details**

No entries at date of publication.