



Australian Capital Territory

Workers Compensation Amendment Act 2016 (No 2)

A2016-27

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J2015-801

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A2016-27

An Act to amend the *Workers Compensation Act 1951* and the *Workers Compensation Regulation 2002*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Workers Compensation Amendment Act 2016 (No 2)*.

2 Commencement

This Act commences on 1 July 2017.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Workers Compensation Act 1951* and the *Workers Compensation Regulation 2002*.

Part 2 Workers Compensation Act 1951

4 Registration of agreements for compensation New section 79 (3A)

insert

- (3A) However, subsection (3) does not apply to an agreement of a worker to receive an amount of compensation under section 51 (Compensation for permanent injuries generally) for an imminently fatal asbestos-related disease.

5 Making claim for compensation Section 116 (2)

substitute

- (2) A claim for weekly compensation must be accompanied by a medical certificate from—
- (a) for a claim that relates to an imminently fatal asbestos-related disease—a doctor prescribed by regulation; or
 - (b) for any other claim—a doctor.

6 No compliant certificate with claim New section 119 (5)

insert

- (5) In this section:
- insurer**, in relation to a claim, means—
- (a) for a claim that relates to an imminently fatal asbestos-related disease—the DI fund; or
 - (b) for any other claim—the insurer liable to indemnify the employer for the claim.

**7 Time for making claim under pt 4.4
Section 121 (2)**

substitute

- (2) However, the claim may be made earlier than 2 years after the injury if—
- (a) the injury is an imminently fatal asbestos-related disease; or
 - (b) the injury has stabilised; or
 - (c) in any other case—the Magistrates Court allows the claim to be made.

8 Section 122

substitute

122 When is a claim made?

- (1) A claim is made on the day the claim is given to—
- (a) for a claim that relates to an imminently fatal asbestos-related disease—the insurer; or
 - (b) for any other claim—the employer or the insurer.

Note Payment of weekly compensation begins when the worker gives notice of the injury to the employer (see s 38).

- (2) If a claim mentioned in subsection (1) (b) is given to the employer and insurer on different days, the claim is made on the day the claim is given to the first of them.
- (3) In this section:
- insurer***, in relation to a claim, means—
- (a) for a claim that relates to an imminently fatal asbestos-related disease—the DI fund; or

- (b) for any other claim—the insurer liable to indemnify the employer for the claim.

9 Section 123 heading

substitute

123 Injury notice

10 Section 123 (2)

substitute

- (2) The notice must be served on—
- (a) if the notice relates to an imminently fatal asbestos-related disease—the DI fund manager; or
 - (b) if the notice relates to any other injury—the employer or, if the worker has more than 1 employer, the employer responsible for the workplace where the injury happened.

**11 Action by employer in relation to claims
Section 126 (1)**

omit

the insurer liable to indemnify the employer for the claim (the *liable insurer*)

substitute

the liable insurer

12 New section 126 (6)

(6) In this section:

liable insurer, in relation to a claim for compensation or another document in relation to a claim, means—

- (a) for a claim that relates to an imminently fatal asbestos-related disease—the DI fund; or
- (b) for any other claim—the insurer liable to indemnify the employer for the claim.

**13 Meaning of *insurer* and *given to insurer* for pt 6.2
Section 127 (1), definition of *insurer*, paragraph (c)**

substitute

- (c) the DI fund, if—
 - (i) when the injury happened, the employer was not a self-insurer, and the employer has or had no compulsory insurance policy that applies to the claim; or
 - (ii) when the injury happened, the employer was not a self-insurer, and the employer has or had a compulsory insurance policy that applies to the claim but the policy was issued by an insurer that has been wound up or is being wound up; or
 - (iii) the claim relates to an imminently fatal asbestos-related disease.

14 Section 128

substitute

128 Claim—injury other than imminently fatal asbestos-related disease

- (1) This section applies to a claim for compensation in relation to an injury, other than an imminently fatal asbestos-related disease.
- (2) If, at the end of 28 days after the day the insurer receives the claim, the insurer has not decided to reject the claim—
 - (a) the insurer is taken to have accepted the claim; and
 - (b) any payment made by the insurer in relation to the claim is not recoverable.
- (3) However, subsection (2) (b) does not apply to a payment made by the DI fund.

128A Claim—imminently fatal asbestos-related disease

- (1) This section applies to a claim for compensation in relation to an imminently fatal asbestos-related disease.
- (2) If, at the end of 28 days after the day the insurer receives the claim, the insurer has not decided to reject the claim, the insurer must tell the worker—
 - (a) that the claim is still being considered by the insurer; and
 - (b) the reason why the claim is still under consideration.

15 New section 166AA

insert

166AA DI fund—compensation for imminently fatal asbestos-related disease

- (1) The DI fund must meet the cost of compensation payable to an injured worker for an injury that is an imminently fatal asbestos-related disease.
- (2) If the DI fund pays compensation to an injured worker for an injury that is an imminently fatal asbestos-related disease the DI fund is entitled to recover a recoverable amount from any of the following (a *liable party*) whether located in or outside the ACT:
 - (a) a current or former employer of the injured worker if the disease was contracted, aggravated, accelerated, or the disease recurred, when the worker was engaged by the employer;
 - (b) an entity liable in tort for the injury;
 - (c) an insurer for an employer mentioned in paragraph (a) or an entity mentioned in paragraph (b).
- (3) For subsection (2), the recoverable amount is the proportion of the total amount the DI Fund has paid to the injured worker as compensation for the injury for which the liable party is responsible, determined by—
 - (a) written agreement between the DI fund manager and the liable party; or
 - (b) arbitration.
- (4) A recoverable amount payable by a liable party is a debt owing by the liable party to the DI fund.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

**16 Who may make claim for payment
New section 170 (1A)**

insert

- (1A) A person may also make a claim for payment if the person is—
- (a) an injured worker (the *injured worker*) who has sustained an injury that is an imminently fatal asbestos-related disease (the *injury*) that forms the basis of the claim for payment; or
 - (b) a person appointed to represent the injured worker.

**17 Payments out of DI fund
Section 171 (1)**

after

A claim for payment

insert

, other than a claim for payment for an injury that is an imminently fatal asbestos-related disease,

18 Section 171 (2) (a)

substitute

- (a) if they provide for payment of a lump sum to the claimant for an injury that is not an imminently fatal asbestos-related disease—the Magistrates Court; or

**19 Effect of payment of claims
Section 171I (2)**

substitute

- (2) However, subsection (1) (c) does not apply if—
- (a) the employer is a non-business employer; or
 - (b) the claim was for payment for an injury that is an imminently fatal asbestos-related disease.

**20 Compensation for permanent injuries
Schedule 1, new item 53**

insert

53 imminently fatal asbestos-related disease 100

21 Dictionary, new definitions

insert

asbestos-related disease means a disease caused by exposure to asbestos.

imminently fatal asbestos-related disease, in a person, means an asbestos-related disease that is reasonably likely to—

- (a) substantially contribute to the death of the person; and
- (b) result in the death of the person within 2 years after a doctor mentioned in section 116 (2) (a) certifies the person has the disease.

Part 3 Workers Compensation Regulation 2002

22 New section 8B

in division 3.1, insert

8B Doctor that may provide medical certificate for imminently fatal asbestos-related disease—Act, s 116 (2) (a)

A doctor in any of the following fields of medical specialty is prescribed:

- (a) oncology;
- (b) respiratory medicine;
- (c) cardio-thoracic surgery.

23 Using evidence-based methodology Section 9 (2), new examples

insert

Example—*aetiology of injury*

exposure to asbestos fibres

Example—*diagnosis of injury*

mesothelioma

Example—*prognosis of injury*

2 year life expectancy from date of diagnosis

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**24 Assessment by medical specialist—request by other than nominated treating doctor
New section 10 (2) (e)**

insert

(e) the DI fund manager.

**25 Diseases related to employment
Schedule 1, new items 3A to 3C**

insert

3A	cancer of a lung	employment involving exposure to, or contact with, asbestos
3B	cancer of the larynx	employment involving exposure to, or contact with, asbestos
3C	cancer of an ovary	employment involving exposure to, or contact with, asbestos

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 May 2016.

2 Notification

Notified under the [Legislation Act](#) on 15 June 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Workers Compensation Amendment Bill 2016 (No 2), which originated in the Legislative Assembly as the Workers Compensation Amendment Bill 2016 and was passed by the Assembly on 7 June 2016.

Clerk of the Legislative Assembly

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