

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Workplace Safety and Industrial Relations)

Workers Compensation Amendment Bill 2016

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Workers Compensation Amendment Bill 2016

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Workers Compensation Amendment Act 2016*.

4 **2 Commencement**

5 This Act commences on 1 July 2017.

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

8 **3 Legislation amended**

9 This Act amends the *Workers Compensation Act 1951* and the
10 *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.

1 **7 Time for making claim under pt 4.4**
2 **Section 121 (2)**

3 *substitute*

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

10 **8 Section 122**

11 *substitute*

12 **122 When is a claim made?**

- 13 (1) A claim is made on the day the claim is given to—
14 (a) for a claim that relates to an imminently fatal asbestos-related
15 disease—the insurer; or
16 (b) for any other claim—the employer or the insurer.
17 *Note* Payment of weekly compensation begins when the worker gives notice
18 of the injury to the employer (see s 38).
19 (2) If a claim mentioned in subsection (1) (b) is given to the employer
20 and insurer on different days, the claim is made on the day the claim
21 is given to the first of them.

- 22 (3) In this section:

23 *insurer*, in relation to a claim, means—

- 24 (a) for a claim that relates to an imminently fatal asbestos-related
25 disease—the DI fund; or

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

3 **9 Section 123 heading**

4 *substitute*

5 **123 Injury notice**

6 **10 Section 123 (2)**

7 *substitute*

8 (2) The notice must be served on—

9 (a) if the notice relates to an imminently fatal asbestos-related
10 disease—the DI fund manager; or

11 (b) if the notice relates to any other injury—the employer or, if the
12 worker has more than 1 employer, the employer responsible for
13 the workplace where the injury happened.

14 **11 Action by employer in relation to claims**
15 **Section 126 (1)**

16 *omit*

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

19 *substitute*

20 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.

1 **15 New section 166AA**

2 *insert*

3 **166AA DI fund—compensation for imminently fatal**
4 **asbestos-related disease**

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

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

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

3 *insert*

4 (1A) A person may also make a claim for payment if the person is—

- 5 (a) an injured worker (the *injured worker*) who has sustained an
6 injury that is an imminently fatal asbestos-related disease (the
7 *injury*) that forms the basis of the claim for payment; or
8 (b) a person appointed to represent the injured worker.

9 **17 Payments out of DI fund**
10 **Section 171 (1)**

11 *after*

12 A claim for payment

13 *insert*

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

16 **18 Section 171 (2) (a)**

17 *substitute*

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

21 **19 Effect of payment of claims**
22 **Section 171I (2)**

23 *substitute*

24 (2) However, subsection (1) (c) does not apply if—

- 25 (a) the employer is a non-business employer; or

- 1 (b) the claim was for payment for an injury that is an imminently
2 fatal asbestos-related disease.

3 **20 Compensation for permanent injuries**
4 **Schedule 1, new item 53**

5 *insert*

53 imminently fatal asbestos-related disease 100

6 **21 Dictionary, new definitions**

7 *insert*

8 *asbestos-related disease* means a disease caused by exposure to
9 asbestos.

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

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

1 **Part 3** **Workers Compensation**
2 **Regulation 2002**

3 **22** **New section 8B**

4 *in division 3.1, insert*

5 **8B** **Doctor that may provide medical certificate for**
6 **imminently fatal asbestos-related disease—Act,**
7 **s 116 (2) (a)**

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

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

13 **23** **Using evidence-based methodology**
14 **Section 9 (2), new examples**

15 *insert*

16 **Example—*aetiology of injury***
17 exposure to asbestos fibres

18 **Example—*diagnosis of injury***
19 mesothelioma

20 **Example—*prognosis of injury***
21 2 year life expectancy from date of diagnosis

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

1 **24 Assessment by medical specialist—request by other than**
2 **nominated treating doctor**
3 **New section 10 (2) (e)**

4 *insert*

5 (e) the DI fund manager.

6 **25 Diseases related to employment**
7 **Schedule 1, new items 3A to 3C**

8 *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 2016.

3 Republications of amended laws

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

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