

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**WORKERS COMPENSATION AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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## **Purpose of the Bill**

The *Workers Compensation Act 1951* (the Act) establishes the regulatory framework for the Territory's private sector workers' compensation scheme (the Scheme).

The purpose of the Scheme is to establish a statutory safety net of benefits and support available to private sector workers in the event of injury, ensuring that they have access to essential services such as medical treatment, rehabilitation assistance and weekly compensation.

Access to these services and support is reinforced by the availability of lump sum compensation for prescribed injuries that result in permanent loss. The Scheme provides this additional compensation for workers who experience a permanent life impact arising from their work related injuries.

In the context of imminently fatal asbestos-related diseases<sup>1</sup>, the Scheme falls short of achieving these objectives and instead puts vulnerable workers in a position of disadvantage at a time of critical need.

Under the current Scheme arrangements, Territory workers who suffer from an imminently fatal asbestos-related disease experience difficulties receiving timely compensation - the reasons for this are two-fold.

Firstly, asbestos-related diseases are not included in the schedule of injuries for which lump sum compensation is available under the Act. Without falling within the list of injuries prescribed by Schedule 1 to the Act, injured workers are left to pursue what can be a long and stressful common law litigation process in order to receive compensation that acknowledges the non-economic impact of their injury.

Further, the medical reality that applies to imminently fatal asbestos-related diseases is such that there is a considerable lag time between the workers exposure to the asbestos product(s) giving rise to the disease and the initial onset of the disease. It is this gap in time which means that:

- any insurance policy in place at the time of the exposure may not respond to a claim because it has long since expired by the time the condition becomes apparent; and
- the Default Insurance Fund (DIF) responds to the claim in its capacity as the insurer of last resort and is legislatively limited in its ability to fast-track asbestos claims.

The *Workers Compensation Amendment Bill 2016* (the Bill) recognises and addresses these issues, introducing amendments to the Act which ensure that workers who suffer from an imminently fatal asbestos-related disease receive equitable and timely access to statutory compensation.

As set out in detail below, the Bill:

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<sup>1</sup> Imminently fatal asbestos-related disease means the person has an asbestos-related disease, the person is reasonably likely to die within two years and the disease is reasonably likely to be a significant factor contributing to the person's death.

- provides for statutory lump sum compensation for workers who suffer from an imminently fatal asbestos-related disease by including asbestos-related diseases within Schedule 1 to the Act;
- sets the amount of non-economic loss lump sum compensation payable to workers suffering from an imminently fatal asbestos-related disease to 100% of the single loss amount provided in s 49 of the Act;
- modifies the DIF's claim management arrangements so that liability on workers' compensation claims for imminently fatal asbestos-related diseases may be accepted and paid without first requiring the claimant to pursue all other tortfeasors; and
- allows the DIF to initiate legal action against another insurer or other tortfeasor and to use any contribution/damages received to offset statutory claim costs.

These amendments only apply to imminently fatal asbestos-related disease claims. The existing framework for non-imminently fatal asbestos related disease claims is not affected; workers continue to have access to their statutory compensation benefits and support.

By introducing these amendments the Bill modernises and improves statutory entitlements for workers suffering from imminently fatal asbestos-related diseases.

### **Human Rights Considerations**

No provisions in this Bill engage rights under the *Human Rights Act 2004*.

### **Climate Change Vulnerability Assessment**

The measures contained in the Bill have negligible climate change effects.

## OUTLINE OF THE PROVISION OF THE BILL

### DETAIL

#### **Clause 1 — Name of Act**

This clause provides that the name of the Act is the *Workers Compensation Amendment Act 2016*.

#### **Clause 2— Commencement**

This clause provides that the Act commences on 1 July 2017.

#### **Clause 3— Legislation amended**

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

#### *Workers Compensation Act 1951*

#### **Clause 4 – Registration of agreements for compensation New Section 79 (3A)**

New section 79(3A) will allow the DI Fund to settle claims for an imminently fatal asbestos-related diseases, without requiring the claimant to obtain independent legal advice.

The worker will receive 100% of the statutory amount, or the maximum amount payable, removing the need to seek legal advice for the purpose of negotiation.

Removing the obligation to obtain legal advice allows the injured worker to decide whether they wish to seek legal advice or not and may reduce any delays in the compensation process resultant from involving a third party such as a lawyer.

#### **Clause 5 – Making claim for compensation Section 116 (2)**

This amended sub section prescribes that the medical certificate which accompanies a claim for an imminently fatal asbestos-related disease must be from a doctor prescribed by regulation.

#### **Clause 6 - No compliant certificate with claim New Section 119 (5)**

New section 119 (5) inserts a definition of insurer to include the DI Fund as insurer for imminently fatal asbestos-related disease claims.

#### **Clause 7 - Time for making claim under pt 4.4 121 (2)**

This amended section removes the requirement for workers with an imminently fatal asbestos-related disease from having to wait for 2 years after the injury to access lump sum compensation for permanent impairment.

#### **Clause 8 - Section 122**

Section 122 has been amended to insert the definition of insurer to include the DI Fund as insurer for imminently fatal asbestos-related diseases.

This will allow an injured worker with an imminently fatal asbestos related disease to claim directly on the DI Fund without first having to pursue any other responsible party.

It will also remove the obligation on the injured worker to locate their former employers with whom they were employed when they were exposed to asbestos.

#### **Clause 9 – Section 123 heading**

The heading has been amended to ‘Injury notice’ consistent with the remainder of the Act.

#### **Clause 10 – Section 123 (2)**

New section 123 (2) ensures that an injury notice for an imminently fatal asbestos-related disease is served on the DI Fund.

#### **Clause 11 – Action by an employer in relation to claims Section 126 (1)**

The wording has been amended to simplify the title of the liable insurer and allow a definition to be inserted.

#### **Clause 12 - New section 126 (6)**

This new section inserts a definition of liable insurer, to ensure that the DI Fund is defined as the insurer for imminently fatal asbestos-related claims.

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

This section has been amended to include the DI Fund as insurer for imminently fatal asbestos-related disease claims.

#### **Clause 14 – Section 128**

Section 128 has been amended to allow the DI Fund additional time over and above the 28 days to make a claim determination. In the case of asbestos claims, where exposure may have occurred decades ago, the DI Fund may require additional time to obtain historical records from employers and insurers.

It also places an obligation on the DI Fund to advise the injured worker the reason a decision cannot be made within the 28 day time frame. This will ensure that the injured worker is kept informed on the progress of the claim and provide the injured worker with the opportunity to provide assistance to the DI Fund to make the claim determination should it be available.

#### **Clause 15 – New section 166AA**

Currently the legislation does not allow the DI Fund to pursue other parties for contribution or recovery unless common law proceedings are instituted.

This new section allows the DI fund to seek contribution or recovery from any other party such as other employers located outside of the ACT, product manufacturers and public liability insurers without having to issue common law proceedings which can be timely and costly.

This will ensure that where possible any monies that can be returned to the DI Fund to reduce the cost of levies placed on insurance policies can be pursued effectively and promptly.

#### **Clause 16 – Who may make a claim for payment New section 170 (1A)**

New section 170 (1A) has been included to allow an injured worker with an imminently fatal asbestos-related disease claim to make a claim for payment directly on the DI Fund without having to pursue an employer first.

#### **Clause 17 – Payments out of the DI Fund Section 171 (1)**

This section has been amended to ensure that the DI Fund can pay a lump sum settlement to a worker with an imminently fatal asbestos-related disease without first obtaining approval of the Magistrates Court.

This is to remove any possible delay in paying compensation which may arise whilst waiting for court approval.

The DI Fund will still advise the court of the settlement as a matter of course, but will not need to await approval before paying a settlement.

#### **Clause 18 – New section 171 (2) (a)**

This section has been amended to ensure that the DI Fund can pay a lump sum settlement to a worker with an imminently fatal asbestos-related disease without first obtaining approval of the Magistrates Court.

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

This section has been amended to remove the obligation upon an employer to repay the DI Fund 3 times the amount of settlement of an imminently fatal asbestos-related disease.

This is to ensure that employers are not penalised as a result of legislative inadequacies.

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

This amendment inserts imminently fatal asbestos-related diseases into the table of permanent injuries. This will allow an injured worker with an imminently fatal asbestos-related disease to access lump sum compensation for permanent impairment.

**Clause 21 – Dictionary, new definitions**

These new definitions define an asbestos-related disease and an imminently fatal asbestos-related disease.

*Workers Compensation Regulation 2002*

**Clause 22 – New section 8B**

This new section provides a list of the types of doctors that may provide a medical certificate for an imminently fatal asbestos-related disease.

This is to ensure that appropriately qualified medical specialists complete the certificates.

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

This new sub section provides examples of the types of information a doctor must provide when undertaking a medical assessment.

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

This new sub section allows the DI Fund to request an injured worker to attend a medical assessment.

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

This amendment inserts an additional 3 asbestos-related diseases to the table of disease related to employment.

The table deems the additional 3 diseases as related to employment, if it can be proven that the person worked in employment involving exposure to or contact with asbestos, removing the burden of proof from the injured worker.