

Imminently Fatal Asbestos-Related Diseases

Information Guide to Worker's Compensation in the ACT

Disclaimer

This information is for guidance only and not to be taken as an expression of the law. It should be read in conjunction with the *Workers Compensation Act 1951* (the Act) and any other relevant legislation. The Act and the Regulations can be found at www.legislation.act.gov.au

Introduction

In the ACT, worker's compensation is available to private sector workers under the *Workers Compensation Act 1951* (the Act). Amendments were introduced so that from 1 July 2017, Territory workers with an imminently fatal asbestos-related disease:

- will now have access to a permanent loss lump sum; and
- be able to claim timely compensation directly from the Default Insurance Fund in the first instance.

This will increase the timely compensation available to workers suffering from an imminently fatal asbestos-related disease as well as making access to compensation quicker as claimants will no longer have to pursue all other employers before claiming from the Default Insurance Fund.

Who is entitled to claim compensation?

When is a worker entitled to compensation?

If you have:

- an imminently fatal asbestos-related disease; and
- you were exposed to asbestos fibres whilst you were a worker in the Australian Capital Territory; and
- you have not previously received any compensation, including through common law settlement, for your asbestos-related disease.

Definition of worker

To be entitled to workers compensation a person must be, or must have been, a worker at the time of their exposure to asbestos. A worker is defined under the Act, refer to Chapter 3, section 8 through to section 19.

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Generally speaking, a worker will be an individual who is employed under a contract of service or a contract for labour or substantially for labour only, regardless of whether this is express or implied. A contract can be made either orally or in writing and applies to full time, part time and casual workers.

A contract of service exists where there is an employer/worker relationship. In a contract of service, the worker is directly engaged by the employer in employment. Most employment contracts are made under a contract of service.

A contract for service is generally where an individual performs work for the principal and personally does part or all of the work. A person who is employed under a contract for service and works on a regular and systematic basis can be deemed to be a worker.

Certain people are not, or considered under the Act not to be, a worker, these include:

- an individual who is paid to achieve a stated outcome, has to supply all equipment of trade required to carry out the work and who would be liable for rectifying any defect;
- people employed as a public servant;
- an employee under the *Safety, Rehabilitation and Compensation Act 1988*; and
- people engaged in a professional sporting activity.

For other definitions applying to specific individuals refer to the Act to determine if they are a worker.

Making a claim for compensation

You will need to obtain a diagnosis from a prescribed doctor that you have an imminently fatal asbestos-related disease before you can make a claim directly with the Default Insurance Fund. A prescribed doctor is a doctor in one of the following specialty fields:

- oncology;
- respiratory medicine; or
- cardio-thoracic surgery.

Once you have been diagnosed with an imminently fatal asbestos-related disease you can fill out the claim form (Form 1) and submit it together with your medical certificate (Form 1a) to the Default Insurance Fund for assessment.

The Default Insurance Fund will determine whether you were a "worker" as defined under the legislation and in doing so, whether your employment was connected with the ACT.

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You may be contacted by the Default Insurance Fund if more information is required to determine your claim. For example, there are a number of documents and other evidence that is required when making your claim:

- copies of recent payslips (where relevant);
- copies of any relevant documents in relation to pensions, benefits, allowances;
- copies of any relevant documents in relation to other compensation you may be receiving or have already received;
- copies of relevant employment details during the time in which you were exposed to asbestos;
- a completed medical certificate (Form 1a);
- relevant test results where possible, eg x-rays, etc;
- proof of identity.

If your claim is successful you will be notified by the Default Insurance Fund in writing.

If you do not have an imminently fatal asbestos-related disease and you think you have a workers' compensation claim then you will need to make your claim via the ordinary claims process under the Act.

Compensation — statutory benefits

What are statutory benefits

Statutory benefits are compensation payments or benefits payable under the Act. Statutory benefits are paid on a "no fault basis", which means that it is not necessary to prove that anyone was at fault for causing the asbestos-related disease. As long as the requirements of the Act are met, a worker, or a member of the family of a deceased worker, may be entitled to benefits under the Act. This can be distinguished from common law damages, where a person must prove that negligence on the part of another person resulted in or contributed to their illness or disease.

Lump sum compensation

From 1 July 2017, a worker who is diagnosed with an imminently fatal asbestos-related disease will now be able to claim lump sum compensation for permanent loss at 100% impairment. In addition, this lump sum can be claimed earlier than 2 years after the worker is diagnosed with an imminently fatal asbestos-related disease.

Weekly payments of compensation

If you were currently employed at the time you were diagnosed with an imminently fatal asbestos-related disease you may be entitled to receive weekly compensation payments.

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Tax and Centrelink implications

Compensation payments may have implications for calculating your tax and may affect any payments you are receiving from Centrelink. Please seek advice from the Australian Taxation Office and/or Centrelink in relation to your individual circumstances.

Australian Taxation Office

www.ato.gov.au

Centrelink Compensation Recovery

Phone 1800 777 653

<https://www.humanservices.gov.au/customer/services/centrelink/centrelink-compensation-recovery>

Medical and other expenses

Medical expenses

Compensation is payable to cover the medical treatment and other expenses relating to the asbestos-related disease. Other expenses may include the amount of wages lost by the worker whilst attending treatment, transport to and from the treatment, and the cost of accommodation (including meals) if required.

Compensation for death

Compensation payments may be payable to dependants of a deceased worker where that worker died from a work related injury.

These payments cover the funeral expenses for the deceased worker. In addition, dependants are also able to claim a single lump sum payment and other benefits under the Act.

Common law damages

What are common law damages?

Common law damages differ from statutory compensation under the scheme because at common law a person must be able to prove that the disease resulted from negligence, breach of contract or breach of statutory duty by the employer.

If you have already received damages through common law for a particular asbestos-related disease you are not eligible for compensation under the compensation scheme for that disease. However, if the damages received were for a different asbestos-related disease you may still be eligible for compensation under the scheme.

You may still take action at common law, however, if you receive lump sum compensation under the scheme, and go on to succeed at common law, you will be required to pay compensation amounts

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back to the scheme. If you receive more or the same amount of damages at common law as you received through the scheme, you must pay the scheme back the amount of compensation you received. If you receive less at common law than what you have received under the scheme, you will be required to pay back what you have received at common law. You will be advised of the amount you are required to pay back by the Default Insurance Fund.

Other Acts

Statutory Compensation under other Laws

Compensation is not payable to a person if they have already received compensation for the same asbestos-related disease under legislation in another State or Territory.

If a person receives compensation under other legislation after receiving compensation from the Default Insurance Fund, they may be required to re-pay an amount to the Fund. You must notify the Default Insurance Fund in writing regarding the receipt of compensation through other legislation as soon as practicable.

Dispute Resolution

The usual procedures for dispute resolution under the Act apply if you disagree with a decision of the Default Insurance Fund regarding your application.

Firstly, discuss your concerns with the Default Insurance Fund to see if you can work out a resolution to the dispute.

If you still need to resolve your dispute then the conciliation and arbitration steps that are set out in the Act are available.

Further information

Further information about claims for workers who have an imminently fatal asbestos-related disease or assistance with completing a claim form can be obtained through contacting the Default Insurance Fund.

Default Insurance Fund

Phone: (02) 6207 0131

Email: DefaultInsurance@act.gov.au

Post: GPO Box 158 Canberra ACT 2601

Internet: <http://apps.treasury.act.gov.au/insurance-and-risk-management/default-insurance-fund>