

Compensation for Dust Disease

The *Workers Compensation and Injury Management Act 2023 (the WCIMA23)* provides for a presumption of work injury for dust disease and how dust disease claims are made and determined.

Key Points

Act ref: ss. 28, 35, Part 2 Division 9, 426

- Pneumoconiosis, silicosis, mesothelioma, lung cancer and diffuse pleural fibrosis – each referred to as a dust disease in the *WCIMA23* – are covered under a presumption of work injury.
- The presumption applies if a worker has been exposed to asbestos at work (or in the case of pneumoconiosis or silicosis, exposed to mineral dusts harmful to the lungs) and has suffered a dust disease.
- To rebut the presumption an employer must prove the disease was not suffered in the course of employment, or prove any relevant exposure of the worker in the course of employment was trivial or minimal.
- If a worker with a dust disease seeks a determination from the Dust Disease Medical Panel, the claim must be given to the WorkCover WA CEO for referral to the Dust Disease Medical Panel (DDMP).
- There is a specific approved dust disease claim form and the *WCIMA23* provides for progression of the claim by the last employer, determinations by the DDMP, and timeframes for insurers and self-insurers to make liability decisions on the claim following the DDMP determination.
- The DDMP makes binding determinations on questions relating to the diagnosis of the disease, the extent of any incapacity (relevant if the claim relates to income compensation), and the degree of permanent impairment (relevant if the claim relates to permanent impairment compensation and/ or access to common law). The DDMP's determination is binding on parties and the courts.

Key Points

- The *WCIMA23* provides for a lump sum entitlement for permanent impairment arising from a dust disease which is accessible if the DDMP determines a worker is suffering a dust disease and any impairment level has resulted from exposure to the disease.

Questions & Answers

Q. How does the *WCIMA23* impact on dust disease common law claims?

A. The *WCIMA23* requires that the worker and employer register an agreement as to whether the worker's degree of whole person impairment is at least 15% (the impairment threshold to pursue common law) or for the worker to have the impairment assessed by the Dust Disease Medical Panel. The assessment or agreement is registered to support an election to pursue common law damages. See Information Sheet 39 regarding common law and the provisions relating to terminal dust diseases and accrual of common law actions for silicosis.

Q. Can the DDMP make a determination if the worker is unable to attend due to ill health and how long does it take?

A. The *WCIMA23* facilitates determinations without the worker's attendance or physical examination if it is appropriate to do so and sets timeframes for the determination with reference to the receipt of all necessary information required to make the determination (e.g. a respiratory specialist report and a high-resolution CT scan as a minimum).