

Common Law

The *Workers Compensation and Injury Management Act 2023* (WCIMA23) provides for a worker to elect to retain the right to pursue common law damages and the impairment and election registration requirements that apply to the commencement of proceedings.

Key Points

Act ref: Part 7, ss. 153 Reg ref: Part 9

- The *WCIMA23* sets out the threshold requirements for the commencement of proceedings to seek damages and the awarding of damages:
 - the worker's degree of permanent whole of person impairment must be at least 15%
 - the worker must elect to retain the right to seek damages.
- This means a writ cannot be issued, or settlement of the common law claim effected, without the impairment assessment and election being registered.
- The worker's election must be in the approved form published on the WorkCover WA website, CL1 *Common law election* and be accompanied by supporting documents as set out in Part 9 of the *Workers Compensation and Injury Management Regulations 2024* (WCIMR24).
- There is a limit on damages that may be awarded for whole person impairment (WPI) between 15% and 25%.
- The *WCIMA23* sets out the reduction in income compensation after an election is made for impairments between 15% and 25% WPI.
- The *WCIMA23* also includes special provisions for dust disease damages claims including referral to a Dust Disease Medical Panel for assessment of the worker's degree of permanent impairment.

Key Points

- The *WCIMA23* provides for workers with a dust disease with less than two years to live, to begin court proceedings before the above threshold requirements have been met. This is in recognition of the terminal nature of the disease and ensures the worker can make a common law claim in their lifetime.
- The *WCIMA23* also amended the *Limitation Act 2005* so that the accrual of any common law action for workers suffering silicosis (e.g. from exposure to silica when cutting stone benchtops) is the same as for workers who suffer asbestosis (accrues when the level of whole person impairment is at least 25%).
- Common law settlement agreements must be filed with the Director.

Questions & Answers

Q. Can a settlement agreement to finalise the worker's statutory claim include provision for damages?

A. No. Settlement of a workers compensation claim is made via a statutory settlement agreement under s.149 of the *WCIMA23* and cannot include an amount for damages or for the potential liability of the employer for damages to be commuted. The settlement pathways for an employer's liability for workers compensation entitlements and damages are separate.