

Western Australia

**Waterfront Workers (Compensation for
Asbestos Related Diseases) Act 1986**

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Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986

An Act to make special provision for payment of workers' compensation to certain waterfront workers suffering from asbestos related diseases and to amend the *Employers Indemnity Supplementation Fund Act 1980*.

1. Short title

This Act may be cited as the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986*¹.

2. Commencement

This Act shall come into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —
arbitrator has the same meaning as it has in the Compensation Act;

Compensation Act means the *Workers' Compensation and Injury Management Act 1981*;

Fund means the Employers' Indemnity Supplementation Fund established under section 5(1) of the *Employers' Indemnity Supplementation Fund Act 1980*;

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ICWA means the body continued as the Insurance Commission of Western Australia under the *Insurance Commission of Western Australia Act 1986*;

waterfront worker means a worker, within the meaning of the *Compensation Act*, employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area;

WorkCover WA has the same meaning as it has in the *Compensation Act*.

[Section 3 amended by No. 86 of 1986 s. 11; No. 55 of 1991 s. 3; No. 45 of 1996 s. 38; No. 34 of 1999 s. 61; No. 42 of 2004 s. 170(2) and 174.]

4. Application of Act

- (1) This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant injury under section 33 of the *Compensation Act*, but in respect of whom it is not known who was the employer who last employed the waterfront worker in the employment to the nature of which the relevant injury is, or was, due.
- (2) In subsection (1) **relevant injury** means —
 - (a) mesothelioma; or
 - (aa) lung cancer; or
 - (b) that form of pneumoconiosis known as asbestosis.

[Section 4 amended by No. 22 of 1987 s. 3; No. 42 of 2004 s. 170(3)-(4).]

5. Claims against ICWA

- (1) If, on or after the coming into operation of this Act, a person is entitled to make a claim against an employer that the employer is liable to pay compensation under the *Compensation Act* for an injury to, or the death of, a waterfront worker to whom this Act applies, the person entitled to make that claim may make the claim against the ICWA for payment of that compensation.

- (2) A person making a claim under subsection (1) shall —
- (a) do so in writing; and
 - (b) lodge the claim with the ICWA, together with a full employment history of the waterfront worker verified by statutory declaration.
- (3) Subject to this Act, where a claim is made under subsection (1) —
- (a) the claimant has the same rights and remedies against the ICWA; and
 - (b) the ICWA has the same liability to the claimant and the same rights and remedies in respect of that liability, under the Compensation Act as the claimant and the ICWA would have had if the ICWA were the employer referred to in section 4(1).
- (4) In subsection (1) “**compensation**” includes —
- (a) an amount in settlement of a claim for compensation; and
 - (b) all amounts payable under Schedules 1 and 5 of the Compensation Act.

[Section 5 amended by No. 45 of 1996 s. 38.]

6. Payment of claims against the ICWA

If a claim made under section 5(1) is lodged in accordance with section 5(2) the ICWA shall pay to the claimant such amount as is necessary to satisfy that claim.

[Section 6 amended by No. 45 of 1996 s. 38.]

7. Effect of payment of claim

Where compensation is paid to a claimant in respect of an injury for which a claim has been made under this Act no further claim shall be made under the Compensation Act in respect of that injury.

[Section 7 amended by No. 42 of 2004 s. 170(5).]

8. ICWA to be reimbursed out of Fund

- (1) The ICWA shall, within 14 days of the end of each month, submit to WorkCover WA a return setting out all payments made, and expenses incurred, by the ICWA under this Act during that month.
- (2) WorkCover WA shall, within 7 days of receiving a return submitted to it under subsection (1), reimburse the ICWA in respect of all payments and expenses set out in the return and charge that reimbursement to the Fund.

[Section 8 amended by No. 45 of 1996 s. 38; No. 49 of 1996 s. 64; No. 42 of 2004 s. 170(10).]

9. Payment into Fund of moneys recovered by Commission

- (1) Where WorkCover WA has charged an amount to the Fund under section 8 and WorkCover WA has evidence of —
 - (a) the identity of the employer who, under the Compensation Act, was liable to pay the compensation met by moneys standing to the credit of the Fund; or
 - (b) the identity of the employer referred to in paragraph (a) and the identity of the insurer who is liable to indemnify the employer against his liability to pay the compensation referred to in paragraph (a),

WorkCover WA may apply, in accordance with the *Workers' Compensation and Injury Management Act 1981*, to an arbitrator for an order —

- (c) that the employer was liable to pay compensation met by moneys standing to the credit of the Fund;
- (d) where appropriate, that the insurer is liable to indemnify the employer against his liability to pay the compensation referred to in paragraph (a); and

- (e) that compensation met by moneys standing to the credit of the Fund be refunded by the employer or, if an order has been made under paragraph (d), by the insurer of that employer, to WorkCover WA and credited to the Fund.
- (2) Section 74 of the Compensation Act applies in respect of the liability of insurers and the resolution of disputes between insurers for the purposes of this section in the same way as it applies under the Compensation Act.
- (3) An arbitrator has —
 - (a) jurisdiction to hear and determine an application under subsection (1) and make any order in relation thereto or any part thereof as the arbitrator considers appropriate in the circumstances; and
 - (b) the same functions under this section as the arbitrator has under the Compensation Act.
- (4) The Compensation Act applies to an order or determination made under this section in the same way as if it had been made by the arbitrator under that Act.

[Section 9 amended by No. 49 of 1996 s. 64; No. 34 of 1999 s. 61; No. 42 of 2004 s. 170(6)-(8) and (10).]

10. Dispute resolution

- (1) Any dispute as to the entitlement of a person to make a claim against an employer for the purposes of section 5 or the liability of the ICWA to satisfy a claim under this Act shall be determined under Part XI of the Compensation Act as if it were a dispute arising under that Act.
- (2) The Compensation Act applies to an order or determination made under this section in the same way as it applies to an order or determination made under that Act.

[Section 10 amended by No. 45 of 1996 s. 38; No. 34 of 1999 s. 61; No. 42 of 2004 s. 170(9).]

11. Recovery from shipowners or insurers

(1) In this section —

asbestos-carrying vessel means a vessel from which asbestos was unloaded, or onto which asbestos was loaded, in a harbour or port area within the State at any time after 1 January 1943 but before 30 June 1969;

critical time, in relation to an asbestos-carrying vessel, means a time after 1 January 1943 but before 30 June 1969 when asbestos was unloaded from, or loaded onto, the vessel in a harbour or port area within the State.

(2) Where WorkCover WA has, whether before or after the commencement of this Act, charged moneys to the Fund under section 8, it may recover those moneys in accordance with this section, except to the extent, if any, that they have been recovered under section 9, and credit the amount recovered to the Fund.

(3) WorkCover WA may give notice in writing to —

- (a) a person who was, at any critical time, the owner of an asbestos-carrying vessel;
- (b) an insurer by which a person referred to in paragraph (a) was, at any critical time, insured against liability for claims arising under the laws of the State relating to workers compensation in connection with the loading or unloading of the asbestos-carrying vessel,

advising the person or insurer that, as a result of having been the owner or insurer of such a vessel at such a time, the person or insurer will be required to contribute towards reimbursing WorkCover WA for payments made under section 8 and that, in order to facilitate the spreading of the liability to reimburse amongst all such persons or insurers, particulars relating to any other asbestos-carrying vessel should be provided to WorkCover WA within a period of 1 month after the notice is given.

- (4) At least one month after WorkCover WA has given to a person or insurer notice under subsection (3), WorkCover WA may require the person or insurer to pay to WorkCover WA, within a time specified in the requirement, an amount specified in the requirement.
- (5) An amount required under subsection (4) to be paid by a particular person or insurer is to bear to the total amount of the moneys recoverable under this section the same proportion as the number of asbestos-carrying vessels owned or insured by that person or insurer, as the case may be, bears to the total number of asbestos-carrying vessels known to WorkCover WA.
- (6) In respect of a particular asbestos-carrying vessel, WorkCover WA may recover under this section from either the owner or the insurer, or both of them, but where WorkCover WA recovers from both of them the total amount recovered is not to exceed the amount that is recoverable under this section from either of them in respect of that vessel.
- (7) Where WorkCover WA has, under section 9, recovered moneys from a person or insurer referred to in subsection (3), a credit for the moneys so recovered is to be given against an amount required to be paid under this section.
- (8) An amount required under this section to be paid by a person or insurer is recoverable by WorkCover WA from the person or insurer, as the case may be, as a debt due.
- (9) Where, after WorkCover WA has required payment under this section —
 - (a) WorkCover WA comes to know of any asbestos-carrying vessel that was not taken into account in calculating the amount required to be paid; or
 - (b) by reason of the payment of further moneys under section 8 or the recovery of further moneys under section 9, the total amount of moneys paid under section 8 but not recovered under section 9 increases or decreases,

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WorkCover WA is to recalculate the amount that would be required to be paid under this section by each person or insurer if no payment under this section had already been made, and accordingly require such payment, or give such refund, as the case requires.

[Section 11 inserted by No. 55 of 1991 s. 4; amended by No. 49 of 1996 s. 64; No. 42 of 2004 s. 170(10).]

Notes

- ¹ This is a compilation of the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</i>	84 of 1986	5 Dec 1986	5 Dec 1986 (see s. 2)
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986 Pt. IV</i>	86 of 1986	5 Dec 1986	2 Jan 1987
<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Amendment Act 1987</i>	22 of 1987	25 Jun 1987	25 Jun 1987 (see s. 2)
<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Amendment Act 1991</i>	55 of 1991	17 Dec 1991	14 Jan 1992
<i>Acts Amendment (ICWA) Act 1996 s. 38</i>	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Workers' Compensation and Rehabilitation Amendment Act 1999 s. 61</i>	34 of 1999	5 Oct 1999	15 Oct 1999 (see s. 2(2) and <i>Gazette</i> 15 Oct 1999 p. 4889)

Reprint of the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* as at 12 Apr 2002 (includes amendments listed above)

**Waterfront Workers (Compensation for Asbestos Related Diseases) Act
1986**

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation Reform Act 2004</i> s. 170 and 174	42 of 2004	9 Nov 2004	s. 170(1), (2)(b) and (c) and (10) and s. 174: 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131); s. 170(2)(a) and (3)-(9): 14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)
