

Compensation for Dust Disease

The **WCIMA23** clarifies the presumption of work injury for dust disease and streamlines provisions for 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** – will be covered under a presumption of work injury.
- The presumption will apply 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. The presumption is consistent with the 1981 Act.
- 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.
- Claims will continue to be given to the WorkCover WA CEO for referral to a Dust Disease Medical Panel (DDMP - currently known as the Industrial Diseases Medical Panel).
- The claim and DDMP determination processes have been clarified with provision for a special dust disease claim form, progression of the claim by the last employer, changes to clarify the questions for determination by the DDMP, and modification of the timeframes for insurers and self-insurers to make liability decisions on the claim following the DDMP determination.
- The DDMP will make 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 determination will continue to be 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 comparable to the lump sum entitlement under Schedule 5 of the 1981 Act. The entitlement 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** maintains the provisions for the worker and employer to 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 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 38 regarding common law and the new provisions relating to terminal dust diseases and accrual of common law actions for silicosis.

Q. Will the panel practices and procedures change?

A. Minor efficiency improvements only. The **WCIMA23** facilitates determinations without the worker's attendance or physical examination if it is appropriate to do so, and clarifies timeframes for the determination with reference to the receipt of all necessary information required to make the determination (e.g. respiratory specialist report, high resolution CT scan which are current panel requirements).