

## Common Law

The common law provisions in the *WCIMA23* are closely modelled on the 1981 Act provisions, with some restructuring of subdivisions, and minor changes to clarify that the impairment and election registration requirements apply to the commencement of proceedings.

### Key Points

Act ref: Part 7, ss. 153, 421, 422, 655-658

- The threshold requirements for the awarding of damages will be the same as the 1981 Act:
  - 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.
- However, the *WCIMA23* clarifies the threshold requirements apply to both the commencement of proceedings and the awarding of 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 limit on damages for whole person impairment between 15% and 25% will be retained, along with the provision for reduction in compensation after an election is made for impairments in this range.
- 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 (will be automatically assessed by the Panel if a worker makes a dust disease compensation claim).

### Key Points

- The *WCIMA23* provides for workers with a dust disease, diagnosed 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 successful common law claim in their lifetime.
- The *WCIMA23* also makes amendments to 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 still be filed with the Director. However, the Director will no longer have a role in scrutinising the settlement for fraud or misrepresentation.

## Questions & Answers

**Q. Can a workers compensation settlement include provision for damages?**

**A.** No. Settlement of a workers compensation claim 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 completely separated.