

WESTERN AUSTRALIA

**WATERFRONT WORKERS
(COMPENSATION FOR ASBESTOS
RELATED DISEASES) ACT**

No. 84 of 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*.

[Assented to 5 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

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

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

“Board” means the Workers’ Compensation Board continued and constituted under the *Compensation Act*;

“Commission” means the Workers’ Assistance Commission established by section 94 of the *Compensation Act*;

“*Compensation Act*” means the *Workers’ Compensation and Assistance Act 1981*;

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

“SGIC” means—

(a) if the *State Government Insurance Commission Act 1986* has not come into operation before the coming into operation of this Act, the State Government Insurance Office established by section 3 of the *State Government Insurance Office Act 1938*; and

(b) after the time when the *State Government Insurance Commission Act 1986* and this Act have come into operation, the State Government Insurance Commission established by that Act;

“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.

Application of Act

4. (1) This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant disability 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 disability is, or was, due.

- (2) In subsection (1) “relevant disability” means—
- (a) mesothelioma; or
 - (b) that form of pneumoconiosis known as asbestosis.

Claims against SGIC

5. (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 SGIC 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 SGIC, 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 SGIC; and
 - (b) the SGIC 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 SGIC would have had if the SGIC 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*.

Payment of claims against the SGIC

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

Effect of payment of claim

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

SGIC to be reimbursed out of Fund

8. (1) The SGIC shall, within 14 days of the end of each month, submit to the Commission a return setting out all payments made, and expenses incurred, by the SGIC under this Act during that month.

(2) The Commission shall, within 7 days of receiving a return submitted to it under subsection (1), reimburse the SGIC out of the Fund in respect of all payments and expenses set out in the return.

Payment into Fund of moneys recovered by Commission

9. (1) Where the Commission has paid moneys out of the Fund under section 8 and the Commission has evidence of—

- (a) the identity of the employer who, under the *Compensation Act*, was liable to pay the compensation met by moneys out 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),

the Commission may apply to the Board for an order—

- (c) that the employer was liable to pay compensation met by moneys out 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 paid out 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 the Commission and paid into 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) The Board has—

- (a) jurisdiction to hear and determine an application under subsection (1) and make any order in relation thereto or any part thereof as it considers appropriate in the circumstances; and
- (b) the same functions under this section as it has under the *Compensation Act*.

(4) 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.

Jurisdiction of Board to settle disputes

10. (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 SGIC to satisfy a claim under this Act shall be determined by the Board as if the claim arose under the *Compensation Act* and the Board may exercise any of its functions under that Act for the purposes of this section.

(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.

Employers' Indemnity Supplementation Fund Act 1980 amended

11. Section 10 of the *Employers' Indemnity Supplementation Fund Act 1980** is amended by—

- (a) deleting “and” at the end of paragraph (f); and
- (b) inserting after paragraph (f) the following—

“ (fa) any amounts required to be paid from the Fund under the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986*; and ”.

[*Act No. 80 of 1980 as amended by Acts Nos. 26 of 1981 (as amended by 88 of 1981), 10 and 49 of 1982 and 98 of 1985.]