

## ASBESTOS – THE COMMONWEALTH RESPONSE

Workers employed by the Commonwealth Government are entitled to access workers compensation benefits by virtue of the *Safety Rehabilitation & Compensation Act 1988*. A worker exposed to asbestos who subsequently develops an asbestos related disease is entitled to apply under this act for compensation. The body corporate regulating these claims is Comcare.

An individual, who is not a commonwealth employee exposed to asbestos in a commonwealth government building or as a consequence of the activities of a commonwealth government department may have a right of action in negligence against the Commonwealth to recover compensation on account of the consequences of the condition. Traditionally these claims were managed by the Australian Government Solicitor and/or Government Department accused of being responsible for the exposure.

Common law claims seeking damages for asbestos related disease generally proceed with procedural haste as the injured plaintiff may have as little as weeks or months to live. In recent years there has been an increase in the number of claims made as the effects of the asbestos exposures of the 1960's and 1970's are now culminating in the diagnosis of asbestos related medical conditions.

In order to streamline management of existing claims, and possibly in response to an anticipated influx of future claims, the Commonwealth Government decided to transfer almost all public liability claims to Comcare to manage. This transfer was effected by the enactment of the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.

This means that a claim can now be served on a Comcare office as opposed to service upon the requisite government agency or Australian Government Solicitor. The claim is now managed by the Australian Government Asbestos Litigation Unit within the office of Comcare, and those staff brief lawyers to act on the commonwealth's behalf where necessary.

Claims against Telstra Corporation and its subsidiaries, the Australian Postal Corporation and the Department of Defence are exempted from the legislation. The effect is that claims against those organisations are not dealt with by the Australian Government Asbestos Litigation Unit and continue to be managed by those bodies in their usual way.

### WORKPLACE INJURY ALERT

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#### FOR FURTHER INFORMATION PLEASE CONTACT

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