



Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005

No. 122, 2005

An Act to assign responsibility for the management of certain liabilities relating to asbestos-related claims, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 19 October 2005]

The Parliament of Australia enacts:

Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005 *No. 122, 2005*

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Part 1 Preliminary

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 October 2005
2. Parts 2 and 3	The later of: (a) the day after the end of the period of 7 days beginning on the day on which this Act receives the Royal Assent; and (b) 1 July 2005.	26 October 2005 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

- (1) In this Act:
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asbestos-related claim means a claim for the payment of compensation or damages to a person in respect of an asbestos-related condition suffered by the person or another person arising from a breach of a common law or statutory duty of care by:

- (a) the Commonwealth; or
- (b) an entity that was a Commonwealth authority when the breach of the duty of care occurred.

asbestos-related condition means:

- (a) asbestosis; or
- (b) an asbestos-induced carcinoma; or
- (c) an asbestos-related non-malignant pleural disease; or
- (d) mesothelioma; or
- (e) any other condition that is caused by exposure to asbestos.

claim:

- (a) means a claim or demand of any kind (whether or not involving legal proceedings); and
- (b) includes proceedings of any kind.

Comcare means the body corporate established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*.

Commonwealth authority means:

- (a) a body corporate that is established for a public purpose by a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island) that is not a general law allowing incorporation as a company or body corporate; or
 - (b) a body corporate that:
 - (i) is incorporated under a law of the Commonwealth or of a State or Territory; and
 - (ii) is a body corporate in which the Commonwealth, or a body corporate covered by paragraph (a), has a controlling interest (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*); or
 - (c) a body corporate that is declared to be a Commonwealth authority for the purposes of this Act under subsection 4(1);
-

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but does not include:

- (d) Comcare; or
- (e) the Australian Postal Corporation; or
- (f) Telstra Corporation Limited; or
- (g) a body corporate that is declared not to be a Commonwealth authority for the purposes of this Act under subsection 4(2);
or
- (h) a body corporate that is a subsidiary of a body corporate covered by paragraph (e), (f) or (g).

contract of insurance includes a contract which, however expressed and in whatever form, is in substance an indemnity or guarantee.

court (except in section 15) includes:

- (a) a tribunal; and
- (b) any judge or person acting judicially or authorised by law or consent of parties to hear, receive and examine evidence.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

liability means a liability of any kind (whether actual, potential or contingent) but does not include a liability arising under:

- (a) a contract of insurance; or
- (b) a judgment or order of a court that is not stayed or subject to appeal when Part 2 of this Act commences; or
- (c) a settlement that takes the form of a written agreement entered into before Part 2 of this Act commences.

subject to appeal: a judgment or order is subject to appeal until:

- (a) any applicable time limits for lodging an appeal (however described) against the judgment or order have expired; and
- (b) if there is such an appeal against the judgment or order—the appeal (and any subsequent appeals) have been finally disposed of.

Meaning of subsidiary

- (2) For the purposes of this Act, the question whether a body corporate is a *subsidiary* of another body corporate is to be determined in the same manner as that question is determined under the *Corporations Act 2001*.

4 Declarations—Commonwealth authorities*Body corporate is a Commonwealth authority*

- (1) The Minister may, by written instrument, declare that a body corporate is, from the time that the instrument is made, a Commonwealth authority for the purposes of this Act if, at that time:
- (a) the body corporate is incorporated under a law of the Commonwealth or of a State or Territory; and
 - (b) either:
 - (i) the Commonwealth; or
 - (ii) a body corporate that is established for a public purpose by a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island) that is not a general law allowing incorporation as a company or body corporate; has a substantial interest (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*) in the body corporate.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

Body corporate is not a Commonwealth authority

- (2) The Minister may, by written instrument, declare that a body corporate is not, from the time that the instrument is made, a Commonwealth authority for the purposes of this Act.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

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Publication in Gazette

- (3) The Minister must publish a copy of an instrument made under subsection (1) or (2) in the *Gazette*.
- (4) A failure to comply with subsection (3) does not affect the validity of any declaration made under this section.

Instruments not legislative instruments

- (5) An instrument made under subsection (1) or (2) is not a legislative instrument.

Part 2—Transfer of liabilities

5 Transfer of liabilities to Comcare

Claims against Commonwealth or authority on or before commencement

- (1) If an asbestos-related claim was made against the Commonwealth or a Commonwealth authority on or before the commencement of this Part then, on the commencement of this Part:
 - (a) a liability of the Commonwealth or the authority that relates to the claim ceases to be a liability of the Commonwealth or the authority and becomes a liability of Comcare; and
 - (b) Comcare becomes the successor in law in relation to the liability.

Claims against Commonwealth or authority after commencement

- (2) If an asbestos-related claim is made against the Commonwealth or a Commonwealth authority after the commencement of this Part then, at the time the claim is made:
 - (a) a liability of the Commonwealth or the authority that relates to the claim ceases to be a liability of the Commonwealth or the authority and becomes a liability of Comcare; and
 - (b) Comcare becomes the successor in law in relation to the liability.

Claims against Comcare on or after commencement

- (3) If, on or after the commencement of this Part, a person could make an asbestos-related claim against the Commonwealth or a Commonwealth authority then:
 - (a) the person may make the claim against Comcare; and
 - (b) if the person makes the claim against Comcare—at the time the claim is made:
 - (i) a liability of the Commonwealth or the authority that relates to the claim ceases to be a liability of the

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Commonwealth or the authority and becomes a liability of Comcare; and

- (ii) Comcare becomes the successor in law in relation to the liability.

6 Transfer of liabilities from Comcare

Liabilities may be transferred from Comcare

- (1) The Minister may, by written instrument, declare that a liability that ceased to be a liability of a Commonwealth authority and became a liability of Comcare under section 5 ceases to be a liability of Comcare and becomes a liability of:
- (a) the authority; or
 - (b) an entity that is a successor in law of the authority.
- (2) If the Minister makes a written instrument under subsection (1) then, immediately after the instrument is made:
- (a) the liability ceases to be a liability of Comcare and becomes a liability of the authority or entity (as the case requires); and
 - (b) the authority or entity becomes the successor in law in relation to the liability.

Publication in Gazette

- (3) The Minister must publish a copy of an instrument made under subsection (1) in the *Gazette*.
- (4) A failure to comply with subsection (3) does not affect the validity of any declaration made under this section.

Instruments not legislative instruments

- (5) An instrument made under subsection (1) is not a legislative instrument.

Minister may not repeal, vary etc. instruments

- (6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to this section.

7 Certain consequences of transfer

Application of section

- (1) This section applies in relation to a liability that, under section 5 or 6, ceases to be a liability of one entity (the *transferor*) and becomes a liability of another entity (the *receiver*) at a particular time (the *transfer time*).

Contracts of insurance

- (2) From the transfer time, any contract of insurance to which the transferor was, or was taken to be, a party immediately before the transfer time has effect in relation to the liability as if:
 - (a) the receiver were substituted for the transferor as a party to the contract; and
 - (b) any reference in the contract to the transferor were (except in relation to things that happened before that time) a reference to the receiver.

Conduct of actions, enforcement of judgments etc.

- (3) Without limiting the generality of section 5 or 6:
 - (a) if, at the transfer time, action is being taken relating to the liability—the receiver must, immediately after the transfer time, take over the conduct of that action; and
 - (b) if, at the transfer time, action is being taken relating to the liability before a court—the receiver:
 - (i) replaces the transferor as a party to the action from the transfer time; and
 - (ii) may, if the receiver thinks it appropriate to do so, apply on or after the transfer time to the court to join any other person as a party to the action; and
 - (iii) may, on or after the transfer time, conduct or settle the action; and
 - (c) if, at the transfer time, a judgment relating to the liability has been obtained in favour of the transferor but not enforced—the receiver may take such steps as are necessary to enforce the judgment.

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Transferor must comply with certain requirements of receiver

- (4) The transferor must comply with any reasonable requirement of the receiver:
- (a) relating to the conduct of any action in respect of the liability; or
 - (b) made for the purposes of assisting the receiver to manage the liability;
- including a reasonable requirement that the transferor sign any documents.

Part 3—Finance and administration

8 Appropriation in respect of certain liabilities transferred to Comcare

- (1) There is to be paid to Comcare such amounts as are necessary to enable Comcare to discharge any liability that is a liability of Comcare as a result of the operation of this Act.
- (2) The amounts payable to Comcare under this section are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

9 Money of Comcare

- (1) The Finance Minister may give written directions as to the amounts in which, and the times at which, money referred to in section 8 is to be paid to Comcare.
- (2) A direction made under subsection (1) is not a legislative instrument.

10 Access to records

- (1) If Comcare has the function of assuming and managing a liability as a result of the operation of this Act, records (within the meaning of the *Archives Act 1983*) that:
 - (a) are in the possession, custody or control of the Commonwealth or a Commonwealth authority; and
 - (b) relate to the liability;must be made available to Comcare by the Commonwealth or the authority.
- (2) This section does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.

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11 Disclosure of information

Comcare may require disclosure of information

- (1) Comcare may, by written notice, require the chief executive officer (however described) of an entity to give Comcare information that:
 - (a) the chief executive officer knows or can reasonably acquire; and
 - (b) relates to a liability that, under section 5, has ceased to be a liability of the entity and has become a liability of Comcare; and
 - (c) the Chief Executive Officer of Comcare believes, on reasonable grounds, it is necessary for Comcare to know in order for Comcare to carry out the function conferred on it by section 12.

Requirement to disclose information

- (2) If the chief executive officer (however described) of an entity is given a notice under subsection (1), he or she must ensure that it is complied with as soon as practicable after it is given.
- (3) The chief executive officer (however described) of an entity is not excused from ensuring that a notice given to him or her under subsection (1) is complied with on the ground that giving information covered by the notice would contravene the provisions of any other enactment.
- (4) A person is not liable to:
 - (a) any proceedings for contravening any other law; or
 - (b) civil proceedings for loss, damage or injury of any kind suffered by another person;merely because the person gives information to Comcare to ensure that a notice under subsection (1) is complied with.

12 Additional function of Comcare

In addition to the functions conferred on Comcare under other Acts, Comcare has the function of assuming and managing all

liabilities that are liabilities of Comcare as a result of the operation of this Act.

Note: See section 70 of the *Safety, Rehabilitation and Compensation Act 1988* for powers relating to this function.

13 Directions by Minister

- (1) The Minister may, by notice in writing given to the Chief Executive Officer of Comcare, give a direction to Comcare with respect to:
 - (a) the performance of the function conferred on Comcare by section 12; or
 - (b) the exercise of its powers to do anything in connection with the performance of that function;
otherwise than in relation to a particular case.
- (2) Comcare must comply with a direction given under subsection (1).
- (3) This section does not affect the application of section 28 of the *Commonwealth Authorities and Companies Act 1997* in relation to Comcare.
- (4) A notice given under subsection (1) is not a legislative instrument.

14 Consent required for delegation

- (1) Comcare must obtain the written consent of the Minister before delegating to a person under section 73B of the *Safety, Rehabilitation and Compensation Act 1988*:
 - (a) the function conferred on Comcare by section 12 of this Act;
or
 - (b) a power to do anything in connection with the performance of that function.
- (2) Subsection (1) does not apply if the person to whom the power is delegated is a member of the staff of, or a consultant to, Comcare.

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15 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) The Consolidated Revenue Fund is appropriated for the purposes of this section.
- (4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

16 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 25 May 2005
Senate on 14 June 2005]*

(79/05)

Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005 No. 122, 2005

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