

**WORKERS' COMPENSATION (DUST DISEASES)
AMENDMENT ACT, 1983, No. 208**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 208, 1983.

An Act to amend the Workers' Compensation (Dust Diseases) Act, 1942,
to provide for appeals against certain decisions and for other purposes.
[Assented to, 31st December, 1983.]

Workers' Compensation (Dust Diseases) Amendment.

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

Short title.

1. This Act may be cited as the "Workers' Compensation (Dust Diseases) Amendment Act, 1983".

Principal Act.

2. (1) Except as provided by subsection (2), the Workers' Compensation (Dust Diseases) Act, 1942, is referred to in this Act as the Principal Act.

(2) Subsection (1) does not apply in relation to a provision in Schedule 1.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Workers' Compensation (Dust Diseases) Amendment.

Amendment of Act No. 14, 1942.

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings, transitional and other provisions.

5. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 3, definition of "Dust disease"—
- (i) Omit "pulmonary organs", insert instead "lungs, pleura or peritoneum".
 - (ii) Omit "and accompanies", insert instead "that may also cause".
- (b) Section 3, definitions of "Widow", "Widower"—
- After the definition of "Silicosis Reserve Fund", insert:—
- "Widow", in relation to a worker, includes a woman who was not legally married to the worker but who lived with the worker as his wife on a permanent and bona fide domestic basis.
- "Widower", in relation to a worker, includes a man who was not legally married to the worker but who lived with the worker as her husband on a permanent and bona fide domestic basis.
- (2) Section 5 (2) (c)—
- After "shall", insert ", subject to section 81,".

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 5A—

After section 5, insert:—

Board may use its services and facilities for other purposes.

5A. (1) With the approval of the Minister, the board may, upon payment of such fee (if any) and compliance with such conditions (if any) as it thinks appropriate, make its services and diagnostic facilities available to any person otherwise than in connection with its other functions under this Act.

(2) Any fee payable under subsection (1) may be recovered by the board as a debt in a court of competent jurisdiction.

(4) (a) Section 6 (1) (c)—

Omit "Fund.", insert instead "Fund; and".

(b) Section 6 (1) (d)—

After section 6 (1) (c), insert:—

(d) any fees paid under section 5A.

(c) Section 6 (2)—

Omit "this Act and", insert instead "this Act,".

(d) Section 6 (2)—

After "of this Act", insert "and any other moneys payable by the board under this Act".

(e) Section 6 (2A), (2B)—

After section 6 (2), insert:—

(2A) The board is authorised to make from the Fund grants approved by the Minister for the purpose of clinical or research work relating to the prevention and treatment of dust diseases or for any other purpose relating to the prevention and treatment of dust diseases.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2B) Where, in the opinion of the board, employment in a particular industry or location exposes workers in that industry or location to a substantial risk of contracting a dust disease, the board may expend money from the Fund in arranging for, and causing to be carried out, medical examinations of such of those workers as it thinks fit.

(f) Section 6 (7B)—

After section 6 (7A), insert:—

(7B) An insurer may, subject to the provisions of the Principal Act, adjust the premium payable in respect of a policy of insurance or indemnity required by that Act to be obtained by an employer so as to include an amount equivalent to such part of the contributions payable by the insurer under this section as relates to that employer and that policy.

(g) Section 6 (7E)—

Omit “one hundred dollars”, insert instead “\$2,000”.

(5) (a) Section 7 (2)—

Omit “all” where firstly occurring, insert instead “at least 2”.

(b) Section 7 (2)—

Omit “at which all members are present the decision of the majority”, insert instead “the decision of 2 or more members”.

(c) Section 7 (5)—

After “shall”, insert “, subject to section 81.”.

(6) (a) Section 8 (2B) (a)—

Omit “his death”, insert instead “the worker’s death”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 8 (2B) (a) (i)–(iii)—

Omit the subparagraphs, insert instead:—

- (i) a widow or widower; or
- (ii) a widow or widower and a child or children.

(c) Section 8 (2B) (a)—

Omit “In this paragraph and in subsections (2C) and (2D) ‘child’ means a child or stepchild of the worker under sixteen years of age and a child under that age to whom the worker stood in loco parentis and ‘children’ has a corresponding meaning.”.

(d) Section 8 (2B) (b)–(d)—

Omit “subparagraph (i) or (ii) of paragraph (a)” wherever occurring, insert instead “paragraph (a) (i)”.

(e) Section 8 (2B) (b) (iii)—

Omit the subparagraph, insert instead:—

- (iii) subject to paragraph (ba)—a weekly payment of \$20 per week in respect of each child who was wholly or partly dependent on the worker for support, to continue until the death of that child.

(f) Section 8 (2B) (ba)—

After section 8 (2B) (b), insert:—

(ba) The payment referred to in paragraph (b) (iii) shall not be made in respect of a child who has attained, or attains, the age of 16 years unless the child is under the age of 21 years and is receiving full-time education at a school, college or university.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(g) Section 8 (2B) (e)—

After section 8 (2B) (d), insert:—

(e) In subsections (2B), (2C) and (2D), a reference to a child of a worker includes a reference to a stepchild of the worker and a child to whom the worker stood in loco parentis.

(h) Section 8 (2D) (b)—

After “widow” wherever occurring, insert “or widower”.

(i) Section 8 (2D) (d) (i)—

Omit “she”, insert instead “that person”.

(j) Section 8 (2B) (d) (i)—

Omit “her”, insert instead “that person’s”.

(k) Section 8 (2E)—

After section 8 (2D), insert:—

(2E) (a) At the request of a dependent person referred to in subsection (2B) (a) (i), the board may, if it considers it to be in the best interests of that person so to do, redeem a liability to make weekly payments of compensation to that person by an award of a lump sum as compensation.

(b) The board shall not, under paragraph (a), redeem a liability by awarding a lump sum of an amount that, when added to the total amount payable to the dependent person in pursuance of this Act by way of—

- (i) weekly payments in respect of the period commencing on the date of death of the worker upon whom that person was dependent and ending on the date of the redemption; or

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(ii) any other lump sum,

or both, would exceed the amount of the lump sum that would have been payable to a widow or widower of the worker under section 8 of the Principal Act at the time of the death of the worker.

(c) Subsection (2D) (d) applies to and in respect of a lump sum awarded under this subsection in the same way as it applies to and in respect of compensation referred to in that paragraph.

(l) Section 8 (7)—

After “board”, insert “or, if the board, subject to subsection (8), determines that those payments should be payable as from an earlier date, as from that earlier date”.

(m) Section 8 (8)—

After section 8 (7), insert:—

(8) The board shall not, under subsection (7), determine a date earlier than 29th February, 1968, or earlier than the date of disablement of the worker in respect of whom the application for compensation is made.

(7) Section 8E—

Omit the section.

(8) (a) Section 8H (6)—

Omit “him”, insert instead “the inspector”.

(b) Section 8H (6)—

Omit “he”, insert instead “that person”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 8H (6)—

Omit “two hundred dollars”, insert instead “\$2,000 in the case of a natural person or \$5,000 in the case of a corporation”.

(9) Section 8I—

After section 8H, insert:—

Appeals.

8I. (1) Where—

- (a) a person affected by a decision of the board or the medical authority in relation to a claim for compensation under this Act is dissatisfied with the decision; or
- (b) the Minister is dissatisfied with a decision of the board or the medical authority,

being in either case a decision made after the commencement of this section—

- (c) the person or the Minister, as the case may be, may appeal against the decision to the Workers' Compensation Commission in accordance with rules made under the Principal Act; and
- (d) the Workers' Compensation Commission shall have jurisdiction to hear and determine the appeal.

(2) An appeal under subsection (1) is an appeal by way of rehearing and the decision of the Workers' Compensation Commission on the appeal is final and conclusive.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (3) The board—
- (a) is a necessary party to an appeal under subsection (1); and
 - (b) shall give effect to the decision on such an appeal.
- (10) Section 10 (3)—
- After section 10 (2), insert:—
- (3) The Governor may, by regulation—
 - (a) amend the Schedule by inserting therein the name of any disease or by omitting therefrom the name of any disease; or
 - (b) omit the Schedule and substitute a different Schedule specifying diseases for the purposes of the definition of “Dust disease” in section 3.
- (11) Schedule—
- Before “Micatosis”, insert “Mesothelioma”.

SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION.

- (1) (a) Section 1 (1)—
- Omit “1942,”, insert instead “1942”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

(b) Section 1 (1)—

Omit “as amended by subsequent Acts whether passed before or after the commencement of this Act,”.

(2) Section 2 (1)—

Omit “—1936, as amended by subsequent Acts”.

(3) (a) Section 3, definitions of “Broken Hill mine” and “Broken Hill mine-owner”—

Omit “, as amended by subsequent Acts whether passed before or after the commencement of this Act”.

(b) Section 3, definition of “Prescribed”—

Omit the definition.

(c) Section 3, definition of “Regulation”—

After the definition of “Process”, insert:—

“Regulation” means a regulation made under this Act.

(d) Section 3, definition of “Worker”—

Omit “as amended by subsequent Acts,”.

(4) (a) Section 5 (1) (a)—

Omit “two” wherever occurring, insert instead “2”.

(b) Section 5 (1) (b) (i), (c) (i)—

Omit “sixty-five” wherever occurring, insert instead “65”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

- (c) Section 5 (1) (c) (i)—
Omit “three” wherever occurring, insert instead “3”.
- (d) Section 5 (2A)—
Omit “one hundred dollars”, insert instead “\$100”.
- (5) (a) Section 6 (4)—
Omit “the first day of”, insert instead “1st”.
- (b) Section 6 (6)—
Omit “paragraph (a) of subsection (5)”, insert instead “sub-
section (5) (a)”.
- (c) Section 6 (7)—
Omit “the thirtieth day of”, insert instead “30th”.
- (d) Section 6 (7A) (a)—
Omit “paragraph (a) of subsection (7)”, insert instead “sub-
section (7) (a)”.
- (e) Section 6 (7A) (b)—
Omit “the first day of July, one thousand nine hundred and
forty-five”, insert instead “1st July, 1945”.
- (f) Section 6 (7E), (7F)—
Omit “subsection (7D)” wherever occurring, insert instead
“(7D)”.
- (g) Section 6 (8)—
Omit “constituted under the Principal Act”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

- (h) Section 6 (9)—
Omit “as amended by subsequent Acts,”.
- (i) Section 6 (12)—
Omit “Consolidated Revenue Fund”, insert instead “Consolidated Fund”.
- (6) (a) Section 7 (1)—
Omit “three”, insert instead “3”.
- (b) Section 7 (1)—
Omit “by regulations made under this Act”.
- (7) (a) Section 8 (2A)—
Omit “paragraph (c) of subsection (1)”. insert instead “subsection (1) (c)”.
- (b) Section 8 (2A)—
Omit “subsection (4) of section 8”. insert instead “section 8 (4)”.
- (c) Section 8 (2B) (a)—
Omit “paragraph (b) or (c) of subsection (1)”. insert instead “subsection (1) (b) or (c)”.
- (d) Section 8 (2B) (b)—
Omit “paragraph (b) of subsection (1)”. insert instead “subsection (1) (b)”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

- (e) Section 8 (2B) (c)—
Omit “paragraph (c) of subsection (1)”, insert instead “subsection (1) (c)”.
- (f) Section 8 (2B) (c) (ii)—
Omit “subparagraph (ii) of paragraph (c) of subsection (2)”, insert instead “subsection (2) (c) (ii)”.
- (g) Section 8 (2C) (a)—
Omit “as amended by subsequent Acts,”.
- (h) Section 8 (3)—
Omit “subsections (2B) and (2C) of section 7, sections”, insert instead “sections 7 (2B) and (2C),”.
- (i) Section 8 (3)—
Omit “and 14, subsections (1) and (3) of section 15, sections 55 and 57, subsections (1) and (2) of section 59 and sections”, insert instead “, 14, 15 (1) and (3), 55, 57, 59 (1) and (2),”.
- (j) Section 8 (3)—
Omit “the said section 60”, insert instead “section 60 of the Principal Act”.
- (k) Section 8 (3A)—
Omit “and 14 and of subsection (1) of section 15”, insert instead “, 14 and 15 (1)”.
- (l) Section 8 (7)—
Omit “paragraph (a) of subsection (1)”, insert instead “subsection (1) (a)”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

- (8) (a) Section 8A—
Omit “or any amendment thereof”.
- (b) Section 8A—
Omit “–1936, as amended by subsequent Acts”.
- (9) (a) Section 8AA (2) (b)—
Omit “or any amendment thereof”.
- (b) Section 8AA (3)—
Omit “seven”, insert instead “7”.
- (c) Section 8AA (3)—
Omit “one hundred dollars”, insert instead “\$100”.
- (d) Section 8AA (4)—
Omit “or any amendment thereof”.
- (10) Section 8B (2), (3)—
Omit “subsection (1) of section 8” wherever occurring, insert instead
“section 8 (1)”.
- (11) Section 8D—
Omit “subsection (3) of section 8”, insert instead “section 8 (3)”.
- (12) (a) Section 8F—
Omit “, regulations made thereunder”, insert instead “and the
regulations”.

Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE
LAW REVISION—*continued.*

- (b) Section 8F—
Omit “five hundred dollars”, insert instead “\$500”.
- (13) (a) Section 8G (1), (2)—
Omit “made under this Act” wherever occurring.
- (b) Section 8G (1)—
Omit “subsection (7E) of section 6”, insert instead “section 6 (7E)”.
- (14) (a) Section 8H (3) (a)—
Omit “subsection (6) of section 6”, insert instead “section 6 (6)”.
- (b) Section 8H (4) (b)—
Omit “subsection (8) of section 18”, insert instead “section 18 (8)”.
- (15) (a) Section 10 (2) (b2)—
Omit “as amended by subsequent Acts.”.
- (b) Section 10 (2) (e)—
Omit “one hundred dollars”, insert instead “\$100”.
- (c) Section 10 (4), (5)—
Omit the subsections, insert instead:—
(4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.
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Workers' Compensation (Dust Diseases) Amendment.

SCHEDULE 3.

(Sec. 5.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Saving.

1. For the purposes of the application (by section 8 (3) of the Principal Act) of section 9A of the Workers' Compensation Act, 1926, to an award referred to in section 8 (2) of the Principal Act, section 8 (2B) (b) (iii) of the Principal Act shall be deemed not to have been substituted by this Act.

Transitional.

2. (1) A widow or widower, within the meaning of the Principal Act as amended by this Act, who, before the date of assent to this Act, was awarded compensation under section 8 of the Workers' Compensation Act, 1926, in respect of the death of a person is not entitled to an award of compensation under the Principal Act in respect of the death of the person.

(2) The amendments made by section 4 and Schedule 1 (1) (b) and (6) (a), (b) and (h) have no effect in respect of the death of a person where, in respect of that death, an award was made under the Principal Act before the date of assent of this Act.

Validation.

3. Any act or thing done before the commencement of this Act by—

- (a) the board constituted under the Principal Act; or
- (b) the medical authority constituted under that Act,

that would have been valid if this Act had been in force when it was done is hereby validated.