

**WORKERS COMPENSATION (BENEFITS) AMENDMENT
ACT 1991 No. 99**

NEW SOUTH WALES



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**WORKERS COMPENSATION (BENEFITS) AMENDMENT
ACT 1991 No. 99**

NEW SOUTH WALES



Act No. 99, 1991

An Act to amend the Workers Compensation Act 1987 and certain other Acts to increase workers compensation benefits and common law damages for work-related injuries; and for other purposes. [Assented to 17 December 1991]

Workers Compensation (Benefits) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Workers Compensation (Benefits) Amendment Act 1991.

Commencement

2. This Act commences on a day of days to be appointed by proclamation.

Amendment of Workers Compensation Act 1987 No. 70

3. The Workers Compensation Act 1987 is amended as set out in Schedules 1–4.

Amendment of Workmen’s Compensation (Broken Hill) Act 1920 No. 36

4. The Workmen’s Compensation (Broken Hill) Act 1920 is amended as set out in Schedule 5.

Amendment of Workers’ Compensation (Dust Diseases) Act 1942 No. 14

5. The Workers’ Compensation (Dust Diseases) Act 1942 is amended as set out in Schedule 6.

Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No. 83

6. The Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 is amended as set out in Schedule 7.

Explanatory notes

7. Matter appearing under the heading “Explanatory note” in Schedules 1–7 does not form part of this Act.

Workers Compensation (Benefits) Amendment 1991

**SCHEDULE 1—AMENDMENT OF WORKERS
COMPENSATION ACT 1987 RELATING
TO INCREASED BENEFITS**

(Sec. 3)

- (1) **Section 25 (Death of worker leaving dependants):**
- (a) From section 25 (1) (a), omit “\$150,000”, insert instead “\$211,850”.
 - (b) From section 25 (1) (b), omit “\$49.10”, insert instead “\$66.60”.

Explanatory note

The amendment increases the lump sum component of the compensation payable under section 25 on the death of a worker who leaves dependants from \$150,000 (currently indexed to \$169,450) to \$211,850. The weekly amount payable to a dependent child of the deceased worker is being adjusted from \$49.10 (currently indexed to \$55.50) to \$66.60.

- (2) **Section 35 (Maximum weekly payment):**
- (a) Omit “\$545.70”, insert instead “\$1,000”.
 - (b) At the end of the section, insert:
 - (2) If the amount mentioned in subsection (1):
 - (a) is adjusted by the operation of Division 6; or
 - (b) is adjusted by an amendment of this section,
 the maximum weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted.
 - (3) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted under section 51.

Explanatory note

The first amendment increases the maximum weekly payment that can be made to a totally or partially incapacitated worker from \$545.78 (currently indexed to \$616.40) to \$1,000.

The second amendment is designed to ensure that a worker obtains the benefit of an adjustment made to the amount of the maximum weekly payment that may be made in respect of any period of total or partial incapacity for work where the worker was injured before the adjustment took effect.

Workers Compensation (Benefits) Amendment 1991

SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFITS—*continued*

(3) Section 37 (**Weekly payment during total incapacity—after first 26 weeks**):

- (a) From section 37 (1) (a) (i) omit “\$173.50”, insert instead “\$235.20”.
- (b) From section 37 (1) (a) (ii), omit “\$138.00”, insert instead “\$187.10”.
- (c) From section 37 (1) (a) (iii), omit “\$125.40” and “\$112.90”, insert instead “\$170” and “\$153” respectively.
- (d) From section 37 (1) (b), omit “\$45.80”, insert instead “\$62”.
- (e) From section 37 (c) (i), omit “\$32.70”, “\$73.10”, “\$121.10”, “\$170.30” (where twice occurring) and “\$49.10”, insert instead “\$44.30”, “\$99.10”, “\$164.16”, “\$230.90” and “\$66.60” respectively.
- (f) After section 37 (6), insert:
 - (6A) If an amount mentioned in subsection (1):
 - (a) is adjusted by the operation of Division 6; or
 - (b) is adjusted by an amendment of this section,
 the weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of total incapacity for work occurring on and after that date (not being a period during the first 26 weeks of incapacity), to be determined by reference to that amount as so adjusted.
 - (6B) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted under section 51.

Explanatory note

The first five amendments increase by 20% the indexed rate of weekly compensation payable to a totally incapacitated worker after the first 26 weeks of a claim. The maximum weekly payment will become \$235.20 and the minimum payment for a worker who is over 21 years of age will become \$187.10. If the worker's average weekly earnings are not more than \$170, the worker will receive 100% of those earnings or \$153, whichever is the smaller amount. The amount to be paid for a dependent spouse is to be increased to

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SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFIT—*continued*

\$62 per week If the worker has one or more dependent children, the increased weekly amounts to be paid in respect of those children will be as follows:

- 1 dependent child—\$44.30 per week;
- 2 dependent children—\$99.10 per week;
- 3 dependent children—\$164.16 per week;
- 4 or more dependent children—\$230.90 plus \$66.60 for each child in excess of 4.

The sixth amendment is designed to ensure that a worker obtains the benefit of an adjustment made to the rates of weekly payments of compensation prescribed by section 37 (1) where the worker was injured before the adjustment took effect.

(4) Section 40 (**Weekly payment during partial incapacity**):

(a) Omit “\$545.70” wherever occurring, insert instead “\$1,000”.

(b) After section 40 (9), insert:

(10) If an amount mentioned in subsection (1) or (2):

(a) is adjusted by the operation of Division 6; or

(b) is adjusted by an amendment of this section,

the weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of partial incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted.

(11) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted under section 51.

Explanatory note

Section 40 provides for the payment of compensation in the form of “make-up” in the case of an injured worker who is only partially incapacitated. The first amendment will increase the limits in the section relating to the worker’s probable weekly earnings but for the injury and the worker’s actual or possible weekly earnings after the injury from \$545.70 (currently indexed to \$616.40) to \$1,000.

The second amendment is designed to ensure that a worker obtains the benefit of an adjustment made to the maximum amounts of weekly payments of compensation that may be made in respect of partial incapacity for work where the worker was injured before the adjustment took effect.

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SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFITS—*continued*

(5) Section 42 (**Current weekly wage rate**):

(a) Omit section 42 (1) (d), insert instead:

(d) was not a worker or employee to whom paragraph (a), (b) or (c) applies—is a reference to the prescribed proportion of the worker's average weekly earnings in respect of work being performed by the worker immediately before becoming incapacitated or, if a specific rate is prescribed by the regulations for the purposes of this paragraph, is a reference to that rate.

(b) From section 42 (4), omit “average weekly earning referred to in section 37”, insert instead “average weekly earnings”.

(c) From section 42 (6), omit “shall be”, insert instead “is, except in so far as the regulations otherwise provide, to be”.

(d) In section 42 (8), insert in alphabetical order:

“**average weekly earnings**”, in relation to a worker, means the average weekly earnings of the worker, determined in accordance with section 43, during the period of 12 months before the injury or, if the worker has been employed with the employer concerned for less than 12 months, during that lesser period;

“**prescribed proportion**” means 80 per cent or, if the regulations prescribe some other percentage for the purposes of this section, that other percentage.

(e) From the definition of “award” in section 42 (8), omit paragraph (b), insert instead:

(b) an industrial agreement or enterprise agreement in force under the Industrial Arbitration Act 1940 or the Industrial Relations Act 1991;

Explanatory note

The first amendment provides that, for those injured workers not covered by an award or an industrial agreement or a determination under the Public Sector Management Act 1988 or any other Act and who are not subject to regulations in force under section 42 (1) (c) of the Principal Act, the “current weekly wage rate” is to be the prescribed proportion of their “average weekly earnings”. The prescribed proportion is to be 80% but this will be capable of being altered by regulations made under the Principal Act.

Section 42 (6) requires amounts paid for shift work, overtime and the like to be disregarded when calculating an injured worker's current weekly wage rate for worker's compensation purposes. Because some enterprise agreements may

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provide for workers employed under those agreements to be paid wages in the form of a global amount which subsumes overtime and shift work payments, it may become necessary to provide that section 42 (6) does not operate in respect of those agreements. A further amendment will therefore enable regulations under the Act to be made for the purpose of overriding the requirement in Section 42 (6).

A fourth amendment defines “average weekly earnings” for the purposes of section 42.

A fifth amendment extends the definition of “award” by including an enterprise agreement. The effect of the further amendment will be that the current weekly wage rate of a worker employed under an enterprise agreement will, for the purpose of determining the compensation payable to the worker during a period of incapacity arising from a work-related injury, be the rate of remuneration payable to the worker under the agreement. However, as already mentioned, it is recognised that some enterprise agreements may provide for wages paid under those agreements to be in the form of global payments that subsume overtime and shift work payments. It is envisaged that the “current weekly wage rate” of workers paid under such agreements will be calculated in accordance with regulations made for the purposes of section 42 (1) (c).

(6) Section 61 (**Rates applicable for medical or related treatment**):

(a) From section 61 (3) (a), omit “\$10,000”, insert instead “\$50,000”.

(b) Omit section 61 (4), insert instead:

(4) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (3).

(4A) If proceedings relating to the worker’s claim for compensation are before the Compensation Court and those proceedings relate to, or include matters relating to, the provision of medical or related treatment for the worker, such a direction may be given by the Court. If no such proceedings are before the Compensation Court, such a direction may be given by the Authority on application made in respect of the worker from time to time.

(c) After section 61 (8), insert:

(9) If the maximum amount referred to in subsection (2) or (3) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable in respect of the medical or related treatment of a worker under this section is to be

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calculated by reference to the maximum amount applicable to the worker at the time when the worker became injured.

Explanatorynote

The first amendment will increase from \$10,000 to \$50,000 the maximum amount for which an employer is liable for an injured worker's medical or related treatment.

Section 61 (4) empowers the Compensation Court, on an application made by or on behalf of the worker concerned, to direct that an employer is to be liable for an amount additional to the maximum amount just mentioned. The second amendment will make it unnecessary for such an application to be made "by or on behalf of" the worker concerned and will, where no relevant proceedings relating to the worker's claim for compensation are before the Compensation Court, empower the WorkCover Authority to give Such a direction rather than the Compensation Court.

A further amendment will make it clear that the amount for which an employer is liable for the medical or related treatment of a worker is to be calculated by reference to the maximum amount applicable to the worker under section 61 at the time when the worker was injured.

(7) Section 62 (Rates applicable for hospital treatment):

(a) From section 62 (5) (a), omit "\$10,000", insert instead "\$50,000".

(b) Omit section 62 (6), insert instead:

(6) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (5).

(6A) If proceedings relating to the worker's claim for compensation are before the Compensation Court and those proceedings relate to, or include matters relating to, the provision of hospital treatment for the worker, such a direction may be given by the Court. If no such proceedings are before the Compensation Court, such a direction may be given by the Authority on application made in respect of the worker from time to time.

(c) After section 62 (8), insert:

(9) If the maximum amount referred to in subsection (5) is, On or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable in respect of the hospital treatment of a

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SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
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worker under this section is to be calculated by reference to the maximum amount applicable to the worker at the time when the worker became injured.

Explanatory note

The first amendment will increase from \$10,000 to \$50,000 the maximum amount for which an employer is liable for an injured worker's hospital treatment.

Section 62 (6) empowers the Compensation Court, on an application made by or on behalf of the worker concerned, to direct that an employer is to liable for an amount additional to the maximum amount just mentioned. The second amendment will make it unnecessary for such an application to be made "by or on behalf of" the worker concerned and will, where no relevant proceedings relating to the worker's claim for compensation are before the Compensation Court, empower the WorkCover Authority to give such a direction rather than the Compensation Court.

A further amendment will make it clear that the amount for which an employer is liable for the hospital treatment of a worker is to be calculated by reference to the maximum amount applicable to the worker under section 62 at the time when the worker was injured

(8) Section 63 (Rates applicable for ambulance service):

(a) From section 63 (1) (a), omit "\$5,000", insert instead "\$10,000".

(b) Omit section 63 (2), insert instead:

(2) An amount additional to that prescribed by subsection (1) may be allowed on account of the distance travelled in any particular case.

(2A) If proceedings relating to the worker's claim for compensation are before the Compensation Court and those proceedings relate to, or include matters relating to, the provision of ambulance services for the worker, such an allowance may be awarded by the Court. If no such proceedings are before the Compensation Court, such an allowance may be awarded by the Authority on application made in respect of the worker from time to time.

(2B) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable in respect of ambulance services

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provided to a worker under this Section is to be calculated by reference to the maximum amount applicable to the worker at the ‘time when the worker became injured.

Explanatory note

The first amendment will increase from \$5,000 to \$10,000 the maximum amount for which an employer is liable for ambulance services provided to an injured worker.

Section 63 (2) empowers the Compensation Court to allow an amount additional to the maximum amount just mentioned. The second amendment will, where no relevant proceedings relating to the worker’s claim for compensation are before the Compensation Court, empower the WorkCover Authority to award such an allowance rather than the Compensation Court.

A further amendment will make it clear that the amount for which an employer is liable for ambulance services provided to a worker is to be calculated by reference to the maximum amount applicable to the worker under section 63 at the time when the worker was injured.

(9) **Section 66 (Compensation for permanent injuries):**

- (a) From section 66 (1), omit “\$87,350”, insert instead “\$123,400”.
- (b) From section 66 (2), omit “\$106,300”, insert instead “\$150,150”.

Explanatory note

The amendment will increase by 25% the maximum lump sum entitlements for permanent injuries specified in the Table of Disabilities set out in Division 4 of Part 3 of the Principal Act. The maximum amount awardable for the loss of a single faculty will be increased from \$87,350 (currently indexed to \$98,700) to \$123,400 and, for the loss of 2 or more faculties, it will be increased from \$106,300 (currently indexed to \$120,100) to \$150,150.

(10) **Section 67 (Compensation for pain and suffering):**

From section 67 (1), omit “\$43,700”, insert instead “\$61,750”.

Explanatory note

The amendment will increase from \$43,700 (currently indexed to \$49,400) to \$61,750 the maximum lump sum compensation that may be awarded for pain and suffering to an injured worker who has lost one or more faculties specified in the Table of Disabilities set out in Division 4 of Part 3 of the Principal Act.

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SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFITS—*continued*

(11) Section 76 (**Maximum rate for damage to artificial limbs, spectacles**):

(a) From section 76 (1) (a), omit “\$500”, insert instead “\$2,000”.

(b) Omit section 76 (2), insert instead:

(2) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (1).

(3) If proceedings relating to the worker’s claim for compensation are before the Compensation Court and those proceedings relate to, or include matters relating to, damage to an item referred to in section 74 (1) (b), such a direction may be given by the Court. If no such proceedings are before the Compensation Court, such a direction may be given by the Authority on application made in respect of the worker from time to time.

(4) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable under section 74 in respect of damage resulting from an accident to a worker is to be calculated by reference to the maximum amount applicable to the worker at the time of the accident.

Explanatory note

The first amendment will increase from \$500 to \$2,000 the maximum amount for which an employer is liable for damage to a worker’s crutches, artificial limbs and other artificial aids what the damage has resulted from a work-related accident.

Section 76 (2) empowers the Compensation Court, on an application made by or on behalf of the worker concerned, to direct that an employer is to be liable for an amount additional to the maximum amount just mentioned. The second amendment will make it unnecessary for such an application to be made “by or on behalf of” the worker concerned and will, where no relevant proceedings relating to the worker’s claim for compensation are before the Compensation Court, empower the WorkCover Authority to give such a direction rather than the Compensation Court.

A further amendment will make it clear that, where damage to a worker’s crutches, artificial limbs and other artificial aids has resulted from a

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**SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFITS— *continued***

work-related accident, the amount for which an employer is liable for the damage is to be calculated by reference to the maximum amount applicable to the worker under section 76 at the time of the accident.

(12) Section 77 (Maximum rate for damage to clothing):

(a) From section 77 (1) (a), omit “\$300”, insert instead “\$600”.

(b) Omit section 77 (2), insert instead:

(2) Subject to the regulations, a direction may be given that the employer of a worker is liable for an amount additional to that prescribed by subsection (1).

(3) If proceedings relating to the worker’s claim for compensation are before the Compensation Court and those proceedings relate to, or include matters relating to, damage to the worker’s clothing, such a direction may be given by the Court. If no such proceedings are before the Compensation Court, such a direction may be given by the Authority on application made in respect of the worker from time to time.

(4) If the maximum amount referred to in subsection (1) is, on or after the commencement of this subsection, amended either by an Act or a regulation, the amount for which an employer is liable under section 75 in respect of damage resulting from an accident to a worker is to be calculated by reference to the maximum amount applicable to the worker at the time of the accident.

Explanatory note

The first amendment will increase from \$300 to \$600 the maximum amount for which an employer is liable for damage to a worker’s clothing where the damage has resulted from a work-related accident.

Section 77 (2) empowers the Compensation Court, on an application made by or on behalf of the worker concerned, to direct that an employer is to be liable for an amount additional to the maximum amount just mentioned. The second amendment will make it unnecessary for such an application to be made “by or on behalf of” the worker concerned and will, where no relevant proceedings relating to the worker’s claim for compensation are before the Compensation Court, empower the WorkCover Authority to give a direction rather than the Compensation Court.

A further amendment will make it clear that, where damage to a worker’s clothing has resulted from a work-related accident, the amount for which an

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SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO INCREASED BENEFITS—*continued*

employer is liable for the damage is to be calculated by reference to the maximum amount applicable to the worker under section 77 at the time of the accident.

(13) Section 79 (Definitions):

From the definition of “base index number”, omit “115.8”, insert instead “130.8”.

Explanatory note

The amendment updates the base index number from 115.8 to 130.8 in order to facilitate the indexation of amounts of benefits.

(14) Section 81 (Rounding of):

From section 81 (1), omit “\$150,000, \$106,300, \$87,350 or \$43,700”, insert instead “\$211,850, \$150,150, \$123,400 or \$61,750”.

Explanatory note

Section 81 enables “adjustable amounts” calculated in accordance with section 80 to be rounded off to the next higher number of dollars divisible by 50. (Section 80 provides for the adjustment of amounts of benefits in line with the award rates of pay index.) The amendment consequentially updates the various “adjustable amounts” specified in section 81.

(15) Schedule 6, Part 3 (Savings, transitional and other provisions—Provisions relating to compensation payable on death):

From clause 2, omit “\$67,900” and “\$33.90” wherever occurring, insert instead “\$76,700” and “\$38.30” respectively.

Explanatory note

The amendment increases, in accordance with the award rates of pay index, the benefits payable to the dependants of a deceased worker who dies from an injury received before the commencement of Division 1 of Part 3 of the Principal Act.

(16) Schedule 6, Part 4 (Savings, transitional and other provisions—Provisions relating to weekly payments of compensation):

(a) From clause 4, omit “\$39.70” and “\$19.90” wherever occurring, insert instead “\$44.80” and “\$22.50” respectively.

*Workers Compensation (Benefits) Amendment 1991***SCHEDULE 1—AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO INCREASED BENEFITS—*continued***

(b) After clause 6, insert:

Current weekly wage rate applicable to certain workers incapacitated for work

7. (1) This clause applies to a worker who became entitled to receive weekly payments in respect of incapacity for work before the commencement of Schedule 1 (5) to the Workers Compensation (Benefits) Amendment Act 1991 and who, immediately before becoming so entitled, was not a worker to whom section 42 (1) (a), (b) or (c) of this Act applied.

(2) A reference in Division 2 of Part 3 of this Act to the current weekly wage rate of a worker to whom this clause applies is a reference to:

(a) the rate of \$341.30 per week; or

(b) if some other rate is prescribed by the regulations or the purposes of this paragraph—that other rate.

(3) This clause is to be read subject to section 42 of this Act.

Explanatory note

The first amendment increases, in accordance with the award rates of pay index, the benefits payable to a worker who received a work-related injury before the commencement of Division 2 of Part 3 of the Principal Act.

The second amendment inserts proposed clause 7. That clause is consequential on the first of the amendments to section 42 of the Act effected by Schedule 1 (5).

SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO COMMON LAW CLAIMS

(Sec. 3)

(1) Section 151G (**Damages for non-economic loss**):

(a) From section 151G (3), omit “\$180,000”, insert instead “\$204,000”.

(b) From section 151G (4) and (5), omit “\$45,000” wherever occurring, insert instead “\$36,000”.

(c) From section 151G (5), omit “\$60,000”, insert instead “\$48,000”.

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SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION ACT 1987 RELATING TO COMMON LAW CLAIMS—*continued*

- (d) From section 151G (7), omit “\$180,000, \$45,000 and \$60,000”, insert instead “\$204,000, \$36,000 and \$48,000”.

Explanatory note

The amendments provide that the maximum amount of damages that may be awarded for non-economic loss (such as pain and suffering) in respect of work-related injuries arising on or after the commencement of Schedule 2 (1) will become \$204,000. If, in relation to such an injury, the amount of non-economic loss is assessed at \$36,000 or less, then no damages for that loss are to be awarded. However, if, in relation to such an injury, the amount of non-economic loss is assessed at more than \$36,000 but less than \$48,000, damages will be awarded but at a reduced rate.

(2) Section 151H (**No damages for economic loss unless injury serious**):

- (a) In section 151H (2), after “serious injury is”, insert “, if received before the commencement of Schedule 2 (2) to the Workers Compensation (Benefits) Amendment Act 1991”.
- (b) From section 151H (2) (b), omit “\$60,000”, insert instead “\$67,800”.

(c) After section 151H (2), insert:

(2A) A serious injury is, if received on or after the commencement of Schedule 2 (2) to the Workers Compensation (Benefits) Amendment Act 1991:

- (a) an injury for which the compensation otherwise payable under section 66 for the loss or losses resulting from that injury is, in the opinion of the court, not less than 25 per cent of the maximum amount from time to time referred to in section 66 (1); or
- (b) an injury for which damages for non-economic loss of not less than \$48,000 are to be awarded in accordance with the Division (whether or not compensation is payable under section 66).
- (d) From section 151H (4), omit “\$60,000”, insert instead “\$48,000”.
- (e) From section 151H (6), omit "or death".

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**SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO COMMON LAW CLAIMS—*continued***

Explanatory note

Section 151H prevents the award of damages for economic loss (loss of earnings, medical expenses etc.) unless:

- (a) the worker has suffered a permanent injury (referred to in the “Table of Disabilities” in Division 4 of Part 3) for which the compensation payable is at least 33% of the maximum compensation under that Table; or
- (b) the worker has been awarded damages for non-economic loss of at least \$60,000; or
- (c) the worker dies as a result of the injury.

The amendments provide that, in relation to an injury that is received on or after the commencement of Schedule 2 (2), the percentage referred to in paragraph (a) will be reduced to 25% and the amount referred to in paragraph (b) will be reduced to \$48,000.

(3) Schedule 6 Part 14 (Savings, transitional and other provisions—Provisions relating to common law remedies):

After clause 1, insert:

Damages for economic loss in relation to injuries occurring before the commencement of Schedule 2 (2) to the Workers Compensation (Benefits) Amendment Act 1991

2. Nothing in subsection (2) of section 151H of this Act (as in force after the commencement of Schedule 2 (2) to the Workers Compensation (Benefits) Amendment Act 1991) affects the operation of subsection (6) of that section as regards any amount (including an adjusted amount) that was mentioned in subsection (2) (b) of that section at any time before that commencement.

Explanatory note

The amendment is consequential on the amendments to section 151H (2) made by Schedule 2 (2).

**SCHEDULE 3—AMENDMENT OF WORKERS
COMPENSATION ACT 1987 RELATING TO WORKERS
COMPENSATION INSURERS**

(Sec. 3)

(1) Section 160 (Recovery of prescribed excess amount from employer):

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SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURERS—*continued*

(a) In section 160 (1), insert in alphabetical order:

“prescribed excess amount” means:

(a) \$500; or

(b) if some other amount is prescribed by the regulations for the purposes of this section—that other amount or an amount equal to the maximum weekly payment for the time being referred to in section 35 (whichever is the smaller);

“weekly compensation claim” means a claim for weekly payments of compensation payable to a worker in respect of any period of total or partial incapacity for work.

(b) Omit section 160 (2)–(4A), insert instead:

(2) An employer is required to repay to the insurer under a policy of insurance that the employer has obtained under section 155:

(a) the prescribed excess amount in respect of each weekly compensation claim that the insurer has paid under the policy; or

(b) if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount—the amount so paid.

(3) An employer is not required to comply with subsection (2) to the extent that:

(a) the employer has paid an amount of money directly to an injured worker in relation to a period that is the subject of a weekly compensation claim made by the worker; and

(b) the amount paid by the employer is an amount or is included in an amount for which the employer’s insurer is liable under the relevant policy of insurance to indemnify the employer in respect of the claim; and

(c) the employer’s insurer has offset against the amount payable under that policy in respect of the claim the amount referred to in paragraph (a).

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SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURER—*continued*

(4) An employer who, in relation to a period that is the subject of a weekly compensation claim made by an injured worker:

(a) has paid no money to the worker, or

(b) has paid an amount to the worker that is less than the amount which the employer would, but for this subsection, be required to pay under subsection (2),

is nevertheless not required to comply with that subsection to the extent that the employer's insurer has debited against any amount standing to the employer's credit in respect of the premiums payable for the relevant policy of insurance:

(c) in the case referred to in paragraph (a)—the amount that the employer would otherwise be required to repay under that subsection; or

(d) in the case referred to in paragraph (b)—the difference between the amounts referred to in that paragraph.

(4A) Subsection (2) applies to a small business employer who has obtained a policy of insurance under section 155 only to the extent that the employer and the insurer have agreed that the employer is required to repay to the insurer the prescribed excess amount (or such smaller amount as is agreed on) in respect of each weekly compensation claim paid by the insurer under the policy.

(4AA) For the purposes of this section, the amount of a weekly compensation claim paid under a policy of insurance is the total amount of weekly payments made to the claimant in respect of the injury concerned, and that amount does not include any other payments associated with the claim.

(c) **After** section 160 (7), insert:

(8) This section does not apply to:

(a) a weekly compensation claim made in respect of a worker who receives an injury on a journey to which section 10 applies; or

(b) a weekly compensation claim of any other class prescribed by the regulations for the purposes of this subsection.

Workers Compensation (Benefits) Amendment 1991

SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURER—*continued*

Explanatory note

Section 160 requires an employer (other than a small business employer) who is required to maintain a policy of insurance that complies with Division 1 of Part 7 to repay to the insurer the first \$500 of each claim paid by the insurer under the policy. Under the amended section, the employer of an injured worker will be required to pay to the employer's insurer under such a policy an excess equal to the first \$500 (or other prescribed amount) of weekly payments of compensation in respect of each claim paid by the insurer under the policy. However, the requirement will not apply to the extent that, in consequence of the employer having duly paid an amount of compensation relating to the claim directly to the injured worker, the employer's insurer has offset an amount payable by the insurer in respect of the claim, or has debited any amount that is standing to the employer's credit with the insurer in respect of premiums, against the employer's liability under the section. Such a situation could arise if an employer has paid wages to a worker in respect of a period of incapacity in circumstances where it is only later appreciated that the worker was entitled to be paid worker's compensation for that period or if an employer has advanced weekly compensation payments of which payment has been authorised by the insurer. If the amount that the employer has paid in respect of a claim is greater than the amount of the employer's liability to pay the excess, then of course the employer's insurer will be liable to reimburse the difference to the employer.

The amended section will not apply to journey claims under section 10 or to claims of any other class that may be prescribed by regulations made under the Principal Act.

(2) **Schedule 6, Part 15 (Savings, transitional and other provisions—Provisions relating to insurance):**

After clause 16, insert:

Employer liable to pay first \$500 under policy of insurance

17. (1) Section 160 of this Act (as amended by Schedule 3 (1) to the Workers Compensation (Benefits) Amendment Act 1991) applies to claims for compensation in respect of injuries to workers that occurred after the commencement of Schedule 3 (1) to that Act.

(2) Section 160 of this Act (as in force immediately before the commencement of Schedule 3 (1) to the Workers Compensation (Benefits) Amendment Act 1991) continues to apply to claims for compensation in respect of injuries to workers that occurred before that commencement,

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SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURERS—*continued*

(3) A policy of insurance obtained under section 155 of this Act that relates to a period beginning before and ending after the commencement of Schedule 3 (1) to the Workers Compensation (Benefits) Amendment Act 1991 is to be construed as if, as regards claims under the policy relating to injuries to workers occurring after that commencement, a reference to the employer's agreeing to pay the first \$500 of each claim under the policy, or a lesser amount, were a reference to the employer's agreeing to pay an excess amount of \$500, or a lesser amount, in respect of each weekly compensation claim within the meaning of section 160 of this Act (as in force after that commencement).

Explanatory note

The amendment is consequential on the amendment to section 160. (Set item (l).)

(3) Section 228 (Contributions to Guarantee Fund):

- (a) From section 228 (1) (a), omit "insolvent insurers", insert instead "insurers that were, before the commencement of Schedule 3 (3) to the Workers Compensation (Benefits) Amendment Act 1991, declared under section 226 to be insolvent insurers".
- (b) Omit section 228 (1) (b), insert instead:
 - (b) to provide for the payment of any other amounts to be paid under this Division from the Guarantee Fund during that financial year which directly or indirectly relate to insurers that were, before that commencement, declared under that section to be insolvent.
- (c) In section 228 (2), after "WorkCover Authority Fund" where firstly occurring, insert "in respect of that financial year".
- (d) After section 228 (2), insert:
 - (2A) The Authority may, in respect of any financial year specified by the regulations, determine the amount to be contributed to the Guarantee Fund in respect of that year, being an amount which the Authority considers is necessary:

Workers Compensation (Benefits) Amendment 1991

SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURERS—*continued*

- (a) to satisfy, during that financial year, claims, judgments and awards arising from or relating to policies of insurance issued by insurers that were, after the commencement of Schedule 3 (3) to the Workers Compensation (Benefits) Amendment Act 1991, declared under section 226 to be insolvent insurers; and
- (b) to provide for the payment of any other amounts to be paid under this Division from the Guarantee Fund during that financial year (not being amounts which directly or indirectly relate to insurers that were, before that commencement, declared under that section to be insolvent insurers).

(2B) Where the Authority determines an amount under subsection (2A) in respect of a financial year prescribed for the purposes of that subsection, each insurer (other than a self-insurer or a former licensed insurer) shall pay to the Authority for payment into the Guarantee Fund an appropriate contribution calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

- A is the amount which the insurer is required by or under this Act to contribute to the WorkCover Authority Fund in respect of that financial year;
- B is the total amount required by or under this Act to be contributed by all insurers (other than self-insurers and former licensed insurers) to the WorkCover Authority Fund in respect of that financial year;
- C is the amount determined pursuant to subsection (2A) in respect of that financial year.

Workers Compensation (Benefits) Amendment 1991

**SCHEDULE 3—AMENDMENT OF WORKERS COMPENSATION
ACT 1987 RELATING TO WORKERS COMPENSATION
INSURERS—*continued***

Explanatory note

The amendments have the effect of providing that licensed self-insurers will not be required to make contributions to the Insurers' Guarantee Fund under section 228 in respect of insurers who become insolvent after the commencement of the amendments and in respect of certain other insurers (such as Bishopsgate Insurance Australia Ltd) that became insolvent before that commencement.

**SCHEDULE 4—FURTHER AMENDMENT OF WORKERS
COMPENSATION ACT 1987**

(Sec. 3)

(1) Schedule 6, Part 15 (**Savings, transitional and other provisions—Provisions relating to insurance**):

After clause 17 (as inserted by Schedule 3 (2) to this Act), insert:

Workers compensation policies to cover the liability arising out of certain motor accidents

18. (1) A policy of insurance obtained by an employer under section 155 of this Act is taken to have covered the employer's liability for damages in respect of the death of or an injury to a worker of the employer where:

- (a) that liability arose during the period that began with 1 February 1990 and ended with 30 September 1991 and was attributable to a motor accident within the meaning of the Motor Accidents Act 1988; and
- (b) the liability of the owner of the motor vehicle involved in the accident was not covered by a third-party policy issued under that Act; and
- (c) no damages were recoverable from the Nominal Defendant under that Act in respect of the death or injury.

(2) Subclause (1) has effect irrespective of any regulation under this Act that was in force during the period referred to in that subclause.

Workers Compensation (Benefits) Amendment 1991

**SCHEDULE 4—FURTHER AMENDMENT OF WORKERS
COMPENSATION ACT 1987— *continued***

Explanatory note

A workers compensation policy issued in respect of the whole or a part of the period beginning with 1 February 1990 and ending with 30 September 1991 did not cover the liability of the employer of a worker who was killed or injured as a result of a motor accident where there was no third-party motor accident insurance policy in force in respect of the vehicle involved in the accident and the accident did not occur on a public street. The amendment provides for the workers compensation policy to cover that liability.

(2) Schedule 6, Part 20 (Savings, transitional and other provisions—Savings and transitional regulations):

At the end of clause 1 (1), insert:

the Workers Compensation (Benefits) Amendment Act 1991.

Explanatory note

The amendment authorises the making of regulations of a savings or transitional name consequent on the enactment of the proposed Act. Similar regulations are authorised in respect of previous Acts amending the Principal Act.

**SCHEDULE 5—AMENDMENT OF WORKMEN'S
COMPENSATION (BROKEN HILL) ACT 1920**

(Sec. 4)

Schedule, Part 2 (Compensation Provisions):

- (a)** From, clause 6 (1) (a), omit “41.80”, “14.60”, “14.60”, “19.90”, “19.90”, “19.90” and “14.60”, insert instead “47.20”, “16.50”, “16.50”, “22.50”, “22.50”, “22.50” and “16.50” respectively.
- (b)** From clause 6 (1) (b), omit “41.80”, “30.30” and “19.90”, insert instead “47.20”, “34.20” and “22.50” respectively.
- (c)** From clause 6 (1) (c), omit “41.80”, insert instead “\$47.209”.
- (d)** From clause 6A (b) (i), omit “131.70”, insert instead “148.80”.
- (e)** From clause 6A (b) (ii), omit “131.70” and “9.40”, insert instead “148.80” and “10.60” respectively.
- (f)** From clause 6A (b) (iii), omit “55.40”, insert instead “62.60”.

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**SCHEDULE 5—AMENDMENT OF WORKMEN’S
COMPENSATION (BROKEN HILL) ACT 1920—*continued***

Explanatory note

The amendment reflects, in accordance with the award rates of pay index, the current rates of compensation payable under the Workmen’s Compensation (Broken Hill) Act 1920.

**SCHEDULE 6—AMENDMENT OF WORKERS’
COMPENSATION (DUST DISEASES)
ACT 1942**

(Sec. 5)

Section 8 (Certificate of medical authority and rates of compensation):

- (a) From section 8 (2B) (b) (i) and (3) (d), omit “\$100,000” wherever occurring, insert instead “\$113,000”.
- (b) From section 8 (2B) (b) (ii), omit “\$97.20”, insert instead “\$109.80”.
- (c) From section 8 (2B) (b) (iii), omit “\$49.10”, insert instead “\$55.50”.
- (d) In section 8 (3) (b), after “section 37”, insert “(subsection (1) excepted)”.
- (e) After section 8 (3). insert:

(3AA) The weekly payment of compensation to a worker entitled to compensation under this section in respect of any period of total incapacity for work (not being a period during the first 26 weeks of incapacity) is:

- (a) 90 per cent of the worker’s average weekly earnings, except that:
 - (i) the payment must not exceed \$196.00 per week; and
 - (ii) in the case of a worker who is over 21 years of age at the time of payment⁴ payment is not to be less than \$155.90 per week; and
 - (iii) in the case of a worker whose average weekly earnings do not exceed \$141.60 per week—the payment is to be 100 per cent of those earnings or \$127.50, whichever is the lesser amount; and

Workers Compensation (Benefits) Amendment 1991

SCHEDULE 6—AMENDMENT OF WORKERS’ COMPENSATION
(DUST DISEASES)—*continued*

- (b) in addition, \$51.70 per week in respect of:
 - (i) a dependent wife or dependent husband of the worker; or
 - (ii) if there is no dependent wife or dependent husband at any time during which weekly payments are payable—any one dependent de facto spouse or other family member of the worker; and
- (c) in addition:
 - (i) in respect of the dependent children of the worker, the following amounts per week:

<i>No. of dependent children</i>	<i>Additional amount per week</i>
1 dependent child	\$36.90
2 dependent children	\$82.80
3 dependent children	\$136.80
4 dependent children	\$192.40
5 or more dependent children	\$192.40 plus \$55.50 for each child in excess of 4; or

- (ii) if there are no dependent children at any time during which weekly payments are payable—in respect of the dependent brothers and sisters of the worker, the same amounts per week as are payable under subparagraph (i) in respect of dependent children of the worker,

(3AB) Division 6 of Part 3 of the Principal Act (Indexation of amounts of benefits) applies to the amounts specified in subsection (3AA) as if those amounts were adjustable mounts within the meaning of that Division.

Workers Compensation (Benefits) Amendment 1991

**SCHEDULE 6—AMENDMENT OF WORKERS’ COMPENSATION
(DUST DISEASES)—*continued***

Explanatory note

The first three amendments reflect, in accordance with the award rates of pay index, the current rates of compensation payable under the Workers’ Compensation (Dust Diseases) Act 1942 to the dependants of a worker who has died from a work-related dust disease.

The remaining amendments have the effect of providing that workers totally incapacitated as a result of dust disease will continue to receive weekly payments at the rates existing before the commencement of proposed Schedule 1 (3).

**SCHEDULE 7—AMENDMENT OF WORKERS
COMPENSATION (BUSH FIRE, EMERGENCY AND
RESCUE SERVICES) ACT 1987**

(Sec. 6)

(1) **Section 11 (Compensation payable for injury or death):**

From section 11 (6) (b), omit “\$545.70”, insert instead “\$1,000”.

Explanatory note

The amendment is consequential on the amendments made to section 40 of the Workers Compensation Act 1987. (see schedule 1 (4).)

(2) **Section 27 (Provisions relating to compensation for injury or death):**

From section 27 (6) (b), omit “\$545.70”, insert instead “\$1,000”.

Explanatory note

The amendment is consequential on the amendments made to section 40 of the Workers Compensation Act 1987. (See Schedule 1 (4).)

*[Minister's second reading speech made in—
Legislative Assembly on 14 November 1991
Legislative Council on 9 December 1991]*