



New South Wales

Workers' Compensation (Dust Diseases) Amendment Act 2022 No 53

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Workers' Compensation (Dust Diseases) Amendment Act 2022 No 53

Act No 53, 2022

An Act to amend the *Workers' Compensation (Dust Diseases) Act 1942* and the *Workers Compensation Act 1987* to make further provision about rates of compensation payable to workers; and for related purposes. [Assented to 18 October 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Workers' Compensation (Dust Diseases) Amendment Act 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 8 Certificate of Medical Assessment Panel and rates of compensation

Omit "in respect of workers employed in or about a mine" from section 8(2)(a).

[2] Section 8(3)(b)

Omit "to coal miners".

[3] Schedule 2 Savings, transitional and other provisions

Insert after Part 7—

Part 8 Provisions consequent on enactment of Workers' Compensation (Dust Diseases) Amendment Act 2022

17 Definition

In this Part—

exclusion provisions means the following—

- (a) the Principal Act, Schedule 6, Part 19H, clause 4,
- (b) the Principal Act, Schedule 6, Part 19I, clause 3,
- (c) the Principal Act, Schedule 6, Part 19L, clause 3.

18 Application of rates of compensation—section 8(2)(a) and (3)(b)

Section 8(2)(a) and (3)(b), as in force after the commencement of the amendments made by the *Workers Compensation (Dust Diseases) Amendment Act 2022*, are taken to have been in force in that form on and from the commencement of the Principal Act.

19 Application of certain Principal Act provisions regarding weekly payment of compensation

- (1) The Principal Act, Schedule 6, Part 4, clause 4(1) applies for the purposes of this Act as if paragraphs (a)–(c) were omitted.

Note— The effect of the subclause is that a weekly payment of compensation payable under the Principal Act, Part 3, Division 2 in relation to any period of incapacity for work occurring after the commencement of that Division is, if it resulted from an injury received before that commencement, to be determined in accordance with sections 35, 37 and 40 of the Principal Act, but still subject to the exclusion provisions.

- (2) This clause is taken to have commenced on the commencement of the Principal Act.

20 Weekly payment during partial incapacity—after first 26 weeks—dependants

- (1) For the purposes of this Act, the Principal Act, section 37(1)(b) and (c), as in force by operation of the exclusion provisions, is taken to extend to an injured worker in relation to any period of partial incapacity for work but only if the injured worker is retired by reason of—

- (a) reaching an applicable retirement age, or
- (b) being unfit for suitable employment as a result of a dust disease.

- (2) This clause is taken to have commenced on the commencement of the Principal Act.

21 Calculation of “current weekly wage rate” in certain circumstances

- (1) This clause applies to an injured worker in relation to any period of total incapacity for work if the worker is retired or unemployed.
- (2) For the application of the Principal Act, Part 3, Division 2, as in force for the purposes of this Act by operation of the exclusion provisions, ***current weekly wage rate***, in relation to a worker, means the following—
 - (a) the amount estimated by the Australian Bureau of Statistics as the average weekly total cash earnings of all employees in New South Wales for the week immediately before the worker was incapacitated,
 - (b) if the Australian Bureau of Statistics fails or ceases to estimate the amount referred to in paragraph (a)—the prescribed amount or the amount determined in the way or by reference to matters, or both, prescribed by the regulations.
- (3) Subclause (2) does not apply if the worker produces evidence about actual wages earned before the first 26 weeks of incapacity and requests the rate be determined in accordance with the Principal Act, section 42, as in force for the purposes of this Act by operation of the exclusion provisions.

Schedule 2 Amendment of Workers Compensation Act 1987 No 70

Schedule 6 Savings, transitional and other provisions

Insert after Part 4, clause 4A(4)—

- (5) This clause does not apply for the purposes of the *Workers' Compensation (Dust Diseases) Act 1942*.
- (6) Subclause (5) is taken to have commenced on the commencement of this clause.

[Second reading speech made in—
Legislative Assembly on 10 August 2022
Legislative Council on 11 October 2022]