



New South Wales

# Workers' Compensation (Dust Diseases) Amendment Bill 2022

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Workers' Compensation (Dust Diseases) Act 1942* (the ***Dust Diseases Act***) and the *Workers Compensation Act 1987* (the ***WC Act***) regarding rates of compensation payable to workers suffering from dust diseases.

The Bill validates certain past payments of compensation made to injured workers by deeming amendments to have been in force on and from the commencement of the WC Act or relevant amendments to that Act.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

**Schedule 1[1] and [2]** make amendments to the Dust Diseases Act, section 8 to provide that the rates of compensation under the section are to be the amounts for general workers, rather than not coal miners.

**Schedule 1[3]** inserts proposed Part 8 (clauses 17–21) into the Dust Diseases Act, Schedule 2 (Savings, transitional and other provisions).

Proposed clause 17 provides for a definition for the purposes of the proposed Part. The definition is used to aid in the interpretation of the proposed Part. Certain provisions of WC Act, Schedule 6 operate to apply a 2012 version of the WC Act, Part 3, Division 2 to payments under the Dust Diseases Act.

Proposed clause 19 clarifies how the WC Act, Schedule 6, Part 4, clause 4(1) applies to weekly payments of compensation under the Dust Diseases Act. Clause 4(1) deals with weekly payments of compensation payable under the WC Act, Part 3, Division 2 in relation to periods of incapacity for work occurring after the commencement of the Division resulting from an injury received before the commencement.

Proposed clause 20 provides that, for the purposes of the Dust Diseases Act, the WC Act, section 37(1)(b) and (c), being part of the 2012 version of the section that applies to the Dust Diseases Act, 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.

Proposed clause 21 provides that in certain circumstances, to calculate payments for the purposes of the Dust Diseases Act, the *current weekly wage rate*, in relation to a worker, may be determined as—

- (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, or
- (b) if the Australian Bureau of Statistics fails or ceases to estimate the amount referred to in paragraph (a)—the amount or the amount determined in the way or by reference to matters, or both, prescribed by regulations under the Dust Diseases Act.

The proposed clause does not apply if the worker produces evidence about actual wages earned and requests the rate be determined in accordance with the 2012 version of the WC Act, section 42.

Proposed clauses 18, 19(2) and 20(2) validate certain past payments of compensation made to injured workers by deeming amendments to have been in force on and from the commencement of the WC Act.

## **Schedule 2      Amendment of Workers Compensation Act 1987 No 70**

**Schedule 2** amends the WC Act, Schedule 6, clause 4A to provide that the reduction in weekly payments of compensation set out in that clause does not apply for the purposes of the Dust Diseases Act. The Schedule also validates past payments by deeming the amendment to have commenced on the commencement of clause 4A.



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New South Wales

# Workers' Compensation (Dust Diseases) Amendment Bill 2022

No. \_\_\_\_\_, 2022

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## A Bill for

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.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

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

3

**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14</b>	1
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<b>[1]</b>	<b>Section 8 Certificate of Medical Assessment Panel and rates of compensation</b>	3
	Omit "in respect of workers employed in or about a mine" from section 8(2)(a).	4
<b>[2]</b>	<b>Section 8(3)(b)</b>	5
	Omit "to coal miners".	6
<b>[3]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	7
	Insert after Part 7—	8
<b>Part 8</b>	<b>Provisions consequent on enactment of Workers' Compensation (Dust Diseases) Amendment Act 2022</b>	9
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<b>17</b>	<b>Definition</b>	12
	In this Part—	13
	<i>exclusion provisions</i> means the following—	14
	(a) the Principal Act, Schedule 6, Part 19H, clause 4,	15
	(b) the Principal Act, Schedule 6, Part 19I, clause 3,	16
	(c) the Principal Act, Schedule 6, Part 19L, clause 3.	17
<b>18</b>	<b>Application of rates of compensation—section 8(2)(a) and (3)(b)</b>	18
	Section 8(2)(a) and (3)(b), as in force after the commencement of the amendments made by the <i>Workers Compensation (Dust Diseases) Amendment Act 2022</i> , are taken to have been in force in that form on and from the commencement of the Principal Act.	19
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<b>19</b>	<b>Application of certain Principal Act provisions regarding weekly payment of compensation</b>	23
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(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.	25
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	<b>Note—</b> 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.	27
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(2)	This clause is taken to have commenced on the commencement of the Principal Act.	32
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<b>20</b>	<b>Weekly payment during partial incapacity—after first 26 weeks—dependants</b>	34
(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—	35
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	(a) reaching an applicable retirement age, or	39
	(b) being unfit for suitable employment as a result of a dust disease.	40
(2)	This clause is taken to have commenced on the commencement of the Principal Act.	41
		42

<b>21</b>	<b>Calculation of “current weekly wage rate” in certain circumstances</b>	1
(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 3
(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, <b>current weekly wage rate</b> , in relation to a worker, means the following—	4 5 6
(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,	7 8 9
(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.	10 11 12 13
(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.	14 15 16 17

