

# Workers' Compensation (Dust Diseases) Act 1942 No 14

[1942-14]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Workers' Compensation (Silicosis) Act 1942
- **See also**  
[Relationships Register Bill 2010](#)

### Authorisation

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# Workers' Compensation (Dust Diseases) Act 1942 No 14



New South Wales

An Act to make further and more extensive provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to the disease known as silicosis of the lungs, or owing to other diseases of the pulmonary or respiratory organs caused by exposure to silica dust; to validate certain payments; to repeal the *Workmen's Compensation (Silicosis) Act 1920-1936*, as amended by subsequent Acts; and for purposes connected therewith.

## 1 Name of Act etc

- (1) This Act may be cited as the *Workers' Compensation (Dust Diseases) Act 1942* and shall be construed with the *Workers Compensation Act 1987*, hereinafter called the Principal Act.
- (2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Repeal of *Workmen's Compensation (Silicosis) Act 1920* and schemes made thereunder

- (1) The *Workmen's Compensation (Silicosis) Act 1920* is hereby repealed, and the schemes made thereunder shall, as from the commencement of this Act, cease to have effect.
- (2)
  - (a) All awards, orders, and determinations, made in pursuance of the *Workmen's Compensation (Silicosis) Scheme, No 1 of 1938*, as varied by any subsequent scheme, and the *Workmen's Compensation (Silicosis) Scheme, No 2 of 1938*, as varied by any subsequent scheme, or deemed to be so made and continuing in force immediately prior to the commencement of this Act, shall continue in force after such commencement, but shall be subject to the provisions of this Act.
  - (b) Any application for an award of compensation pending, and any other matter incomplete immediately prior to the commencement of this Act, shall be carried on, and determined, completed or dismissed, in accordance with the procedure prescribed by or under this Act.

(c) Nothing in this Act shall affect any right, obligation, or liability acquired, accrued, or incurred under the *Workmen's Compensation (Silicosis) Scheme, No 1 of 1938*, as varied by any subsequent scheme, and the *Workmen's Compensation (Silicosis) Scheme, No 2 of 1938*, as varied by any subsequent scheme, except in so far as may be otherwise prescribed by this Act.

(3)

(a) Any balance and investments at the credit of the Silicosis Fund immediately before the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967* shall, as from that commencement, be transferred to the Fund established under this Act and any liability of the Silicosis Fund shall, as from that commencement, be and become a liability of the Fund established under this Act.

(b) All property, assets, rights, books and documents that, immediately before the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*, were vested in or in the custody or possession of or under the control of the Silicosis Committee shall, as from that commencement be vested in, or transferred to the custody, possession and control of, the board.

(4) (Repealed)

(5) Any worker who immediately before the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967* was in receipt of continuing payments of compensation to which the worker was entitled under subsection (4), as enacted immediately before that commencement, shall be entitled to receive compensation from the Fund, as from that commencement, at the rate prescribed by or under this Act and appropriate to the case.

### 3 Definitions

(1) For the purposes of this Act, unless the context or subject matter otherwise indicates or requires:

**Board** means the Workers' Compensation (Dust Diseases) Board constituted under this Act.

**De facto relationship** means the relationship between two unrelated adult persons:

(a) who have a mutual commitment to a shared life, and

(b) whose relationship is genuine and continuing, and

(c) who live together,

and who are not married to one another.

**Dust** means dust of such a nature that the inhalation thereof may give rise to a dust disease.

**Dust disease** means any disease specified in Schedule 1, and includes any pathological condition of the lungs, pleura or peritoneum, that is caused by dust that may also cause a disease so specified.

**Dust occupation** means industry or process prescribed as a dust occupation.

**Employer** means an employer of workers in any industry or process, employment in which exposes the worker to the possibility of contracting a dust disease.

**Fund** means the Workers' Compensation (Dust Diseases) Fund constituted under this Act.

**Medical authority** means the medical authority appointed under this Act.

**mine** means a mine within the meaning of the [Coal Mines Regulation Act 1982](#) as in force immediately before its repeal by the [Coal Mine Health and Safety Act 2002](#), but does not include any place that, in accordance with section 8 (3) of the [Coal Mine Health and Safety Act 2002](#), is a place to which that Act does not apply.

**Process** includes occupation and any description of manual labour.

**Regulation** means a regulation made under this Act.

**Silicosis Account** means the Silicosis Contribution Account established under the Silicosis Act.

**Silicosis Act** means the [Workers' Compensation \(Silicosis\) Act 1942](#), as amended by subsequent Acts passed before the commencement of Part 2 of the [Workers' Compensation \(Dust Diseases\) Amendment Act 1967](#).

**Silicosis Committee** means the Workers' Compensation (Silicosis) Committee constituted under the Silicosis Act.

**Silicosis Fund** means the Workers' Compensation (Silicosis) Fund established under the Silicosis Act.

**Silicosis Reserve Fund** means the Silicosis Outstanding Liability Reserve Fund constituted under the Silicosis Act.

**Spouse** of a person means:

- (a) where the claim for compensation concerned was made by or in relation to the person before the commencement of Schedule 6 [2] to the [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#)—a husband or wife of the person, or

(b) where the claim for compensation concerned was made by or in relation to the person after that commencement:

- (i) a husband or wife of the person, or
- (ii) the other party to a de facto relationship with the person.

**the 1998 Act** means the *Workplace Injury Management and Workers Compensation Act 1998*.

**WorkCover Authority** means the WorkCover Authority constituted under the 1998 Act.

**worker** does not include a worker in or about a mine.

(2) For the purposes of determining whether two persons are in a de facto relationship for the purposes of this Act, all the circumstances of the relationship are to be taken into account, including (but not limited to) matters prescribed by the regulations for the purposes of this subsection.

(3) The following provisions have effect for the purposes of this section:

(a) Persons are **related** if:

- (i) one is the parent, or another ancestor, of the other, or
- (ii) one is the child, or another descendant, of the other, or
- (iii) they have a parent in common.

(b) For the purposes of paragraph (a):

- (i) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was an adopted child, and
- (ii) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective, and
- (iii) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent, and
- (iv) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.

(c) In paragraph (b), **adopted** means adopted under the law of any place, whether in

Australia or not, relating to the adoption of children.

**4 (Repealed)**

**5 Workers' Compensation (Dust Diseases) Board**

(1)

- (a) There shall be a Workers' Compensation (Dust Diseases) Board which shall be constituted of 3 representatives of employers and 3 of employees and an independent chairperson, appointed by the Minister.
- (b) (Repealed)
- (c)
  - (i) The chairperson and other members of the board hold office for such period (not exceeding 3 years) as is specified in their instruments of appointment, and are eligible for reappointment. Any member appointed to the board before the amendment of this section by the *Workers Compensation Legislation (Amendment) Act 1994* is taken to have been appointed for a period of 3 years.
  - (ii) Where from any cause a member of the board ceases to hold office the Minister may appoint some suitable person to the member's office for the residue of the period for which such member was appointed.
  - (iii) The Minister may appoint suitable persons to act as alternate members during the illness or absence of any members of the board, and any such alternate member when sitting shall have all the powers and immunities of a member of the board.
- (d) Three members shall constitute a quorum of the board.
- (e) When there is an equal division of opinion, the chairperson shall have a casting vote.
- (f) Proceedings of the board shall not be invalidated by any vacancy in its membership.
- (g) The members of the board may be paid from the Fund such fees and/or travelling expenses as the Minister may approve.

(2)

- (a) The board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under this Act.
- (b) There shall be no legal representation before the board.



(c) The decisions of the board shall, subject to section 8I, be final and conclusive.

(2A) The chairperson of the board may by writing under the chairperson's hand summon any person to attend a meeting of the board at a time and place named in the summons and then and there to give evidence in relation to any application or other matter before the board, and to produce any books, documents, or writings in the person's custody or control which the person is required by the summons to produce.

Any person so summoned who disobeys the summons shall be guilty of an offence against this Act and be liable to a penalty not exceeding 1 penalty unit.

The chairperson may require a person attending a meeting of the board, whether or not in obedience to such a summons, in connection with any application or matter, to give evidence on oath in relation thereto, and for that purpose shall have authority to administer an oath to any such person.

(3) No action or suit shall be brought or maintained against any person who is, or at any time has been, a member of the board for anything done or omitted by the member pursuant to the duties imposed upon the member by or under this Act, nor shall any action, suit or other proceeding lie against the member, nor any costs be payable by the member, in respect of any proceeding before the board.

(4) The board may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a Government department, administrative office or public authority.

#### **5AA Delegation by board**

The board may delegate to a public servant any of its functions (including any of its powers, authorities and duties) under this Act, other than this power of delegation.

#### **5A Board may use its services and facilities for other purposes**

(1) 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.

#### **6 Constitution of Fund**

(1) There shall be established a Workers' Compensation (Dust Diseases) Fund which shall consist of:

(a) all balances, investments and moneys of which the Silicosis Fund consisted immediately before the commencement of Part 2 of the *Workers' Compensation*

*(Dust Diseases) Amendment Act 1967* and all moneys that, immediately before that commencement, were owing to the Silicosis Fund and are paid after that commencement, and

- (a1) all balances, investments and moneys of which the fund established under the scheme of the *Workmen's Compensation (Broken Hill) Act 1920* consisted immediately before the repeal of that Act, and all moneys that, immediately before that repeal, were owing to that fund and are paid after that repeal,
  - (b) all money paid to the board as contributions by insurers under and in accordance with this section, and
  - (c) any moneys provided by Parliament for the purposes of the Fund, and
  - (d) any fees paid under section 5A, and
  - (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and
  - (f) all amounts contributed by insurers under subsection (6) or (7D).
- (2) The board is responsible for administering the Fund and is required to pay out of the Fund:
- (a) all compensation payable under this Act,
  - (b) all money required to pay the fees of members of the board,
  - (c) the remuneration payable to the staff of the board,
  - (d) the fees payable to the medical authority,
  - (d1) the costs involved in reimbursing workers under section 9A,
  - (d2) to the Minister administering the *District Court Act 1973*, such of the costs of operation of the District Court relating to appeals under section 8I, being costs incurred after 30 June 2005, as the Minister administering the *District Court Act 1973* and the Minister administering this Act agree are to be paid from the Fund,
  - (e) the costs of administering this Act and any other money that the board is required to pay under this Act, and
  - (f) the costs involved in the operation of the Dust Diseases Tribunal of New South Wales (including the remuneration payable to the registrar and other staff of that Tribunal).
- (2A) The board is authorised to make from the fund:
- (a) grants 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, and

(b) grants for the purpose of providing assistance to groups or organisations that provide support for victims of dust diseases or their families.

(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.

(3) The board shall, from time to time, make a determination as to the class or classes of employment (in this section hereinafter referred to as **determined class or classes of employment**) in any industry or process, which employment is of such a nature as to expose the worker to the risk of contracting a dust disease and shall from time to time notify the WorkCover Authority of their determination.

(4) The board shall in or before the month of May in each year make an estimate of the amount to be expended out of the Fund for the next following year commencing on 1st July.

(5) Any such estimate shall:

(a) include particulars of any moneys provided by Parliament for the purposes of the Fund in respect of the relevant period,

(b) be set out in writing in a certificate signed by the chairperson of the board,

(c) be forwarded as soon as practicable after the making thereof to the WorkCover Authority, and

(d) be accompanied by a statement certified by the chairperson of the board setting forth the liability estimated by the board to be outstanding under awards made by it to or in respect of workers employed in any industry or process employment in which is of such a nature as to expose workers to the risk of contracting a dust disease and the basis upon which such liability is estimated.

(6) The amount of such estimate (less the moneys referred to in subsection (5) (a)) shall be paid to the board by way of contributions by insurers in accordance with the provisions of this section. The contributions to be so paid by any insurer shall be of such amount and shall be made at such times as the WorkCover Authority determines.

(7) The WorkCover Authority shall, in respect of any such estimate, determine:

(a) the insurers or classes of insurers by whom the contributions under this section are to be paid,

(b) the amount of the contributions to be so paid by such insurers or classes of

insurers,

(c) the times at which such contributions shall be so paid.

The WorkCover Authority may determine different amounts of contributions in respect of different insurers or classes of insurers.

The WorkCover Authority shall make a determination under and in accordance with this section:

- (i) in respect of the estimate made for the year ending on 30th June next following the commencement of section 3 of the *Workers' Compensation (Amendment) Act 1945* as soon as practicable after the commencement of the *Workers' Compensation (Amendment) Act 1946*, and
- (ii) in respect of the estimate made for any succeeding year as soon as practicable after the estimate made for such year has been forwarded to the WorkCover Authority.

(7A)

- (a) Any determination under subsection (7) (a) may be made so as to apply to insurers or classes of insurers insuring or indemnifying employers against liability under the Principal Act or the 1998 Act in respect of any class or classes of employment other than a determined class or classes of employment as well as to insurers or classes of insurers insuring or indemnifying employers against liability under the Principal Act or the 1998 Act in respect of any determined class or classes of employment.
- (b) Without prejudice to the generality of any power conferred on the WorkCover Authority by this section the WorkCover Authority may determine that the amount of any contribution payable by an insurer in respect of any determined class or classes of employment shall be at the rate which prior to 1st July 1945 had been levied by the Silicosis Committee for the purposes of the Silicosis Fund upon the wages paid to workers in such determined class or classes of employment or at such other rate as the WorkCover Authority deems equitable in the circumstances.
- (c) In determining the contributions payable by a self-insurer the WorkCover Authority may have regard to the number of workers employed by such self-insurer and to the wages paid to workers so employed and to the premium which such self-insurer would have paid had the self-insurer's liability been insured under the Principal Act or the 1998 Act respecting workers so employed with an insurer licensed under the Principal Act or the 1998 Act.

(7B) An insurer may, subject to the provisions of the Principal Act and the 1998 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.

(7C) (Repealed)

(7D) The WorkCover Authority may determine additional amounts of contributions to be paid by insurers from their premium income to the board if it considers that it is necessary having regard to relevant prevailing circumstances and the financial stability of the Fund.

(7E) If any contribution payable under subsection (6) or (7D) is not paid within the time determined by the WorkCover Authority the amount of such contribution may be recovered by the board as a debt and the insurer concerned shall be guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units.

Proceedings in respect of the recovery of any such contribution or the enforcement of any such penalty may be instituted by the board.

(7F) A certificate by the WorkCover Authority setting forth the fact that any determination has been made under and in accordance with subsection (7) or (7D) and the amount of contribution payable by any insurer shall in any proceedings for the recovery of any contribution payable under this section or in proceedings for a penalty under subsection (7E) be conclusive evidence of the matters stated in such certificate.

(8) Every insurer shall in each year at such time as the WorkCover Authority may notify, furnish to the Authority such particulars as it may require for the purpose of enabling it to make any determination under this section.

(9) No contribution shall be payable under this section by the operator of a mine, or by an insurer of any such operator, in so far as the business of the insurer relates to insurance of liability under the Principal Act or the 1998 Act of any such operator.

(10) The board shall from time to time furnish to the WorkCover Authority such information as the WorkCover Authority may require in regard to employment in any industry or process which is of such a nature as to expose the worker to the risk of contracting a dust disease, compensation paid and payable to workers in such employment, the financial position of the Fund, and any other matter arising out of the board's duties under this Act which the WorkCover Authority considers will assist it in carrying out its duties under this section.

(11), (12) (Repealed)

## **7 Medical authority**

(1) The medical authority, for the purposes of this Act, shall be a medical board consisting of 3 legally qualified medical practitioners who shall be appointed by the Minister, one of whom shall be appointed chairperson, another of whom shall be nominated by

employers who employ workers in any industry or process, employment in which exposes the worker to the possibility of contracting a dust disease, and another by such workers.

The Minister may appoint one or more deputies of each member of the medical authority. Each such deputy shall have the like qualification and shall be appointed on the like nomination (if any) as is required for the appointment of the member for whom the person is to act as deputy.

In the event of the absence of any member from a meeting of the medical authority a deputy of such member shall be entitled to act in the member's place at such meeting, and, while so acting shall, for all purposes, be deemed to be a member of the medical authority.

Every nomination under this subsection shall be in writing and shall be made at such times and in such manner as may be prescribed.

- (1A) A member of the medical authority holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment and is eligible for reappointment.
- (1B) A member appointed to the medical authority before the amendment of this section by the *Workers Compensation Legislation (Amendment) Act 1994* is taken to have been appointed for a period of 3 years.
- (2) A certificate affecting the compensation of any person shall be issued only after consideration of the case has been given by the medical authority at a meeting at which at least 2 members are present.
- At any meeting of the medical authority the decision of 2 or more members on any question shall be the decision of the medical authority.
- (3) The medical authority shall undertake such duties and make such examinations and furnish reports thereon as the board or the Minister may require.
- (4) If a medical practitioner has given evidence or agreed to give evidence as a medical practitioner in connection with any legal proceedings taken by or on behalf of a worker or by any employer of the worker, the medical practitioner must not act as a member of a medical authority in connection with any case involving those proceedings.
- (5) The certificate of a medical authority shall, subject to section 8I, be conclusive evidence as to the matters certified.
- (6) No action or suit shall be brought or maintained against any person who is, or at any time has been, a member of the medical authority for anything done or omitted by the member pursuant to the duties imposed upon the member by or under this Act, nor shall any action, suit or other proceeding lie against the member, nor any costs be

payable by the member, in respect of any proceeding before the medical authority.

## **8 Certificate of medical authority and rates of compensation**

(1) Subject to this Act:

(a) where the medical authority certifies that a person is totally or partially disabled for work from a dust disease and that the person's disablement was reasonably attributable to the person's exposure to the inhalation of dust in an occupation to the nature of which the disease was due, such person shall, if the board finds:

- (i) that such person was a worker during the whole of the time the person was engaged in such occupation, or
- (ii) that such person was a worker during only part of the time the person was engaged in such occupation, and, on the report of the medical authority, further finds that the person's disablement was reasonably attributable to the person's exposure to the inhalation of dust in such occupation during the time that the board has found that the person was a worker in such occupation,

be entitled to an award from the board, and to receive compensation at the prescribed rates from the Fund,

(b) where the medical authority certifies that a person died from a dust disease and that the person's death was reasonably attributable to the person's exposure to the inhalation of dust in an occupation to the nature of which the disease was due, the dependants of such person shall, if the board finds:

- (i) that such person was a worker during the whole of the time the person was engaged in such occupation, or
- (ii) that such person was a worker during only part of the time the person was engaged in such occupation, and, on the report of the medical authority, further finds that the person's death was reasonably attributable to the person's exposure to the inhalation of dust in such occupation during the time that the board has found that the person was a worker in such occupation,

be entitled to an award from the board, and to receive compensation at the prescribed rates from the Fund,

(c) where a person dies and:

- (i) immediately before the person's death the person was receiving, or was entitled under an award of the board or of the Silicosis Committee to receive, continuing payments of compensation at the prescribed rates from the Fund in respect of the person's disablement for work from a dust disease, or

(ii)

- (a) the person had before the person's death applied to the board or to the Silicosis Committee for compensation under the provisions of this Act or to be examined by the medical authority and:
  - (i) the medical authority had before the person's death examined such person and certified either before or after the person's death pursuant to the last examination of such person made by the medical authority before the person's death that such person was at the time of that examination totally or partially disabled for work from a dust disease and that the person's disablement was reasonably attributable to the person's exposure to the inhalation of dust in an occupation to the nature of which the disease was due, or
  - (ii) the medical authority had not before the person's death examined such person pursuant to such application but after the person's death certifies that such person was immediately before the person's death totally or partially disabled for work from a dust disease and that the person's disablement was reasonably attributable to the person's exposure to the inhalation of dust in an occupation to the nature of which the disease was due, and
- (b) the board finds:
  - (i) that such person was a worker during the whole of the time the person was engaged in such occupation, or
  - (ii) that such person was a worker during only part of the time the person was engaged in such occupation, and the medical authority further certifies that the person's disablement was reasonably attributable to the person's exposure to the inhalation of dust in such occupation during the time that the board has found that the person was a worker in such occupation,

the dependants of such person shall, if they are not entitled under paragraph (b) of this subsection to an award from the board and to receive compensation at the prescribed rates from the Fund, be entitled under this paragraph to an award from the board and to receive compensation at the prescribed rates from the Fund:

Provided that the board may refuse to make an award in favour of and to pay to the dependants of a person referred to in subparagraph (i) of paragraph (a) of subparagraph (ii) of this paragraph the whole or any part of the compensation to which such dependants would, but for this proviso, be entitled under the provisions of this Act if that person before the person's death refused, neglected or failed, without reasonable cause, to submit for examination by the medical authority in accordance with a request of the board or the Silicosis Committee made to the person after the last examination of the person made by the medical



authority before the person's death.

(1A) (Repealed)

(2) The prescribed rates of compensation payable under an award of the board made pursuant to subsection (1), not being an award to which subsection (2B) applies, shall, subject to this section, be:

- (a) where the award is made pursuant to paragraph (a) of that subsection—the weekly compensation payments prescribed by Division 2 of Part 3 of, and Schedule 6 to, the Principal Act in respect of workers employed in or about a mine,
- (b) where the award is made pursuant to paragraph (b) of that subsection—the compensation payments prescribed by Division 1 of Part 3 of, and Schedule 6 to, the Principal Act in respect of workers who die before the commencement of that Division, calculated as if those provisions as in force at the date of death had been in force at the date of the injury to the person whose dependants are entitled to the award,
- (c) where the award is made pursuant to paragraph (c) of that subsection and the disablement for work from the dust disease was:
  - (i) total—the compensation payments prescribed by Division 1 of Part 3 of, and Schedule 6 to, the Principal Act in respect of workers who die before the commencement of that Division, calculated as if those provisions as in force at the date of death had been in force at the date of the injury to the person whose dependants are entitled to the award,
  - (ii) partial—such percentage of the compensation payments that would have been payable under subparagraph (i) had the disablement been total as is equal to the percentage of the person's disablement for work from the dust disease as certified by the medical authority, where the dependants of the person are entitled to compensation payments by reason of the operation of subparagraph (i) of paragraph (a) of subparagraph (ii) of paragraph (c) of subsection (1), at the last examination of the person made by the medical authority before the person's death or, where the dependants of the person are entitled to compensation payments by reason of the operation of subparagraph (ii) of paragraph (a) of subparagraph (ii) of paragraph (c) of subsection (1), in the certificate issued by the medical authority pursuant to subparagraph (ii) of the said paragraph (a),
- (d) where medical or related treatment or hospital treatment or occupational rehabilitation service or ambulance service becomes reasonably necessary as a result of the dust disease—the benefits prescribed by Division 3 of Part 3 of the Principal Act.

All compensation payments authorised to be made under this Act shall be made from the Fund established by section 6.

- (2A) The board is to pay from the Fund the reasonable expenses of a deceased person's funeral not exceeding the sum prescribed by or under section 27 of the Principal Act, but only if:
- (a) the person had dependants and those dependants are entitled to an award under subsection (1), or
  - (b) the person had no dependants, but any dependants of the person (had they existed) would have been entitled to an award under subsection (1).
- (2AA) If a person dies with dependants, being a child or children of the person, to whom no award may be made under subsection (2B) but who are entitled to an award made under subsection (1), the prescribed rate of compensation payable under any such award is as specified in subsection (2).
- (2B)
- (a) This subsection applies to every award of the board made, after the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*, pursuant to subsection (1) (b) or (c) in respect of the death before or after that commencement of a person (in this subsection and in subsections (2C) and (2D) referred to as **the worker**) upon whom there was dependent for support, immediately before the worker's death, the following and no other person or persons:
    - (i) a prescribed relative of the worker, or
    - (ii) a surviving spouse and a child or children of the worker.
    - (iii) (Repealed)
  - (b) Where the dependent person referred to in paragraph (a) (i) was wholly dependent for support on the worker and an award to which this subsection applies is made by the board under subsection (1) (b), the prescribed rates of compensation payable shall be:
    - (i) the sum of \$141,250,
    - (ii) in the case of a surviving spouse—a weekly payment of \$137.30 per week, to continue until the marriage or death, whichever event first occurs, of that person, and
    - (iii) in the case of a surviving spouse and subject to paragraph (ba)—a weekly payment of \$69.40 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.

**Editorial note—**

For notices pursuant to sec 8 (2B) (b), see the Historical notes at the end of this Act.

- (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.
- (bb) The payment referred to in paragraph (b) (ii) is not to be made to a person during any period when the person lives with another person on a permanent and bona fide domestic basis, although not legally married to that other person.
- (c) Where the dependent person referred to in paragraph (a) (i) was wholly dependent for support on the worker and an award to which this subsection applies is made pursuant to subsection (1) (c), the prescribed rates of compensation payable shall be:
  - (i) where the disablement for work from the disease was total, the compensation payments prescribed by paragraph (b), or
  - (ii) where the disablement for work from the disease was partial, a percentage of the compensation payments prescribed by paragraph (b), such percentage being calculated in accordance with the provisions, mutatis mutandis, of subsection (2) (c) (ii).
- (d) Where the dependent person referred to in paragraph (a) (i) was partially dependent on the worker for support the prescribed rate of compensation payable shall be such payments, not exceeding in any case the amount that would have been payable as compensation under the award had that person been wholly dependent on the worker for support, as may be determined by the board to be reasonable and proportionate to the injury to that person.
- (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.

(2C)

- (a) The board may, of its own motion, and shall, on the application of a person who is, or at any time was, entitled under any award made pursuant to this Act before the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*, or pursuant to any scheme made under the *Workers' Compensation (Silicosis) Act 1920*, to compensation in respect of the death of another person, order that compensation in respect of such death shall be payable under that award in accordance with the provisions of this subsection.

- (b) Where the board makes an order under paragraph (a) in respect of an award referred to in that paragraph, there shall be payable under that award in addition to any other amounts paid or payable thereunder, such compensation as would have been payable by virtue of subsection (2B) if:
  - (i) the award had been made after the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*, and
  - (ii) that subsection had been amended by the omission therefrom of subparagraphs (i) and (iii) of paragraph (b) and the word "and" in subparagraph (ii) of that paragraph.
- (c) Compensation payable under an award pursuant to paragraph (b) shall be payable as from such date, not earlier than the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*, as the board, in its discretion, may specify in its order made under this subsection or subsequently determine.

(2D)

- (a) The provisions of section 85 of the Principal Act shall not apply to or in respect of compensation payable under subsection (2B) or (2C).
- (b) All weekly compensation prescribed by subsection (2B) or (2C) as payable in respect of a child of a worker shall:
  - (i) where the worker left a surviving spouse, be paid to such surviving spouse unless the board otherwise orders,
  - (ii) where the worker did not leave a surviving spouse or where the board otherwise orders under subparagraph (i), be paid to such person or institution as the board may direct.

Where the board makes an order under this paragraph the compensation shall be paid in accordance with the terms of such order.

- (c) All weekly compensation payable under subsection (2B) or (2C), other than compensation referred to in paragraph (b), shall be paid to the person entitled (otherwise than as a child of the worker) to compensation under the award.
- (d) All compensation payable under subsection (2B) or (2C), other than weekly compensation, shall:
  - (i) where the board, being of opinion that by reason of the age or health of the person entitled to such compensation or any disability to which that person may be subject or for any other reason it would be in that person's best interests that the compensation be paid in accordance with this subparagraph, so orders, be invested, applied or otherwise dealt with by the board in such

manner as the board thinks fit for the benefit of that person,

- (ii) where the board does not make an order under subparagraph (i), be paid to the person entitled to such compensation, in one or more lump sums determined by the board.

(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
  - (ii) any other lump sum,or both, would exceed the amount of the lump sum that would have been payable to a surviving spouse of the worker under Division 1 of Part 3 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.

(2F) The amendments made to this section by Schedule 10 to the *Workers Compensation (Benefits) Amendment Act 1989* apply:

- (a) in the case of the amendments made to subsections (2B) (b) (i) and (3) (d), only in respect of the death of a person occurring on or after 1 July 1989, or
- (b) in any other case, in respect of compensation that becomes payable on or after 1 July 1989 (whether the claim concerned arose before or after that date).

(2G) The amendments made to this section by the *Workers Compensation Legislation (Amendment) Act 1992* apply:

- (a) in the case of amendments made to subsections (2B) (b) (i) and (3) (d)—only in respect of the death of a person occurring on or after 1 July 1992, or
- (b) in any other case—in respect of compensation that becomes payable on or after 1 July 1992 (whether the claim concerned arose before or after that date).

On and from 1 July 1992 (and until the next adjustment of the amounts under subsection (3) (d)), the amount specified in subsections (2B) (b) (i) and (3) (d) is taken to be \$145,500, the amount specified in subsection (2B) (b) (ii) is taken to be \$141.40 and the amount specified in subsection (2B) (b) (iii) is taken to be \$71.50.

- (3) Except as otherwise provided under this Act, the following provisions of the Principal Act (with such modifications as may be necessary or as may be prescribed by the regulations) apply to awards referred to in subsection (2) or (2B):
- (a) Division 1 of Part 3, as applied under Schedule 6 to that Act in the case of deaths occurring before the commencement of that Division,
  - (b) Division 2 of Part 3 (except sections 51, 52, 52A and 52B), as applied under Schedule 6 to that Act in the case of weekly payments to coal miners (in the application of section 55 the review of weekly payments shall be made by the board and may be made on its own motion in addition to being made on request, but despite clause 4 of Part 4 of Schedule 6, sections 35 and 37 apply without modification),
  - (c) Division 3 of Part 3,
  - (d) Division 6 of Part 3 (in the application of that Division the amounts referred to in subsection (2B) (b) shall be adjustable amounts and the amount of \$141,250 shall be deemed to be included in section 81 (1)),

**Editorial note—**

For notices pursuant to sec 8 (3) (d), see the Historical notes at the end of this Act.

- (e) any other provision prescribed by the regulations.

(3AA), (3AB) (Repealed)

- (3A) In the application to any award of the provisions of the Principal Act and the 1998 Act, the injury to the person who is or whose dependants are entitled to the award shall be deemed to have happened at the time when that person was last employed as a worker in an occupation to the nature of which the disease contracted by him was due:

Provided that if the board, on the report of the medical authority, is satisfied that such person's employment in such occupation did not materially contribute to the person's disablement or death it may, for the purposes of this subsection, disregard that employment and have regard to the last previous employment of such person which the board, on the report of the medical authority, is satisfied did materially contribute to such person's disablement or death.

- (3B) Where the board is satisfied that a person who pursuant to this Act is receiving or entitled to receive weekly payments of compensation under an award in respect of the

person's partial disablement for work from a dust disease has taken all reasonable steps to obtain, and has failed to obtain employment of a kind suited to a person so partially disabled, and that the person's failure to obtain such employment is a consequence, wholly or mainly, of such disablement the board may order that the person's disablement shall be treated as total disablement and the board may at any time rescind any such order.

While such an order remains in force the compensation payable under the award shall be that which would have been payable thereunder had the disablement from the disease been total.

- (4) The requirements of the Principal Act and the 1998 Act as to the giving of notice of or relating to injury and as to the making of claims for compensation apply (subject to the regulations) to the giving of any such notice and the making of any such claims under this Act, except that notices are to be given to, and claims made on, the board instead of to or on the employer.
- (5) (Repealed)
- (5A) The regulations under the Principal Act or the 1998 Act may require a policy of insurance under that Act to contain provisions in respect of the employer's liability independently of that Act for an injury (being a dust disease) to a worker under this Act.
- (6)
  - (a) Any person claiming or receiving, in respect of the person's disablement for work from a dust disease, or the death from a dust disease of any other person, compensation under this Act shall not be entitled to claim or receive, in respect of that part of the person's disablement for work from the disease in respect of which the person is claiming or receiving compensation under this Act, or in respect of the death from the disease of such other person, as the case may be, compensation under the Principal Act or under any other Act (in this subsection referred to as **compensation Act**) in force in New South Wales for the time being relating to compensation to workmen or workers in respect of injuries received, disablement or industrial diseases.
  - (b) Where, but for this paragraph, compensation would be payable under this Act as well as under the Principal Act or any compensation Act in respect of the death of any person and the compensation payable under the Principal Act or under the said compensation Act, as the case may be, in respect of such death:
    - (i) would be of the same or of a lesser amount than the compensation payable under this Act in respect of such death, no compensation shall be payable under the Principal Act or under the said compensation Act, as the case may be, in respect of such death, or

- (ii) would exceed the compensation payable under this Act in respect of such death, the compensation payable under the Principal Act or under the said compensation Act, as the case may be, in respect of such death shall be reduced by the amount of compensation payable under this Act in respect of such death.

For the purposes of this paragraph the amount of any weekly payments prescribed by this Act as compensation payable in respect of the death of a person (not being payments in respect of a child or stepchild of such person or a child to whom the person stood in loco parentis) shall be deemed to be a capital sum the amount of which shall be assessed by the board as the equivalent of such weekly payments. The board shall make such an assessment on the application of a person required to pay compensation under the Principal Act or a compensation Act in respect of that death and, for that purpose, may act upon or take into account such actuarial or other advice or information as it may think fit.

(c) Where the sum of:

- (i) the amount per week payable to any person under this Act in respect of the person's disablement for work from a dust disease, and
- (ii) the amount per week payable to such person under the Principal Act or under any compensation Act, in respect of injuries received by him, the person's disablement or industrial diseases contracted by him,

would, but for this paragraph, exceed:

- (iii) the amount of the weekly payments that would be payable to such person if the person were receiving weekly payments under this Act in respect of the person's total disablement for work from the disease, or
- (iv) the amount of the weekly payments that would be payable to such person if the person were receiving weekly payments under the Principal Act or under the said compensation Act, as the case may be in respect of the person's total incapacity for work from injury, disablement or industrial diseases,

whichever is the greater, then the weekly payments of compensation that would, but for this paragraph, be payable to such person under the Principal Act or under the said compensation Act shall be reduced by an amount equal to the difference between:

- (v) the sum of the amounts referred to in subparagraphs (i) and (ii), and
- (vi) the amount of the weekly payments referred to in subparagraph (iii) or (iv), whichever is the greater.

(6A) Where the board makes an award under this section in respect of the total or partial



disablement for work of a person from a dust disease, or the death of a person from a dust disease, or the death of a person totally or partially disabled for work from a dust disease, and the board:

- (a) has found that such person was a worker during only part of the time the person was engaged in an occupation to the nature of which the disease was due, and
- (b) is of the opinion, on the report of the medical authority, that the disablement of that person from the disease (if the award was not made in respect of the person's death from the disease) or the person's death from the disease (if the award was so made) was to a substantial extent attributable to the person's having been exposed to the inhalation of dust during such time as the person was engaged in that occupation otherwise than as a worker,

the board shall by the terms of that award fix the rate of compensation to be paid thereunder at such rate, being a lesser rate than would otherwise have been payable under the award in accordance with the terms of this section, as the board considers to be appropriate having regard to the extent or likely extent to which the person's disablement or death was attributable to the person's having been so exposed to the inhalation of dust, and the prescribed rate of compensation payable under the award shall in such case be the rate of compensation as so fixed by the board.

- (7) Weekly compensation payments under an award made pursuant to subsection (1) (a) shall be payable as from the date when the application for compensation is received by the board 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.
- (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.
- (9) In this section:

***prescribed relative*** of a person means:

- (a) where the person died before the commencement of Schedule 6 [12] to the [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#)—a surviving spouse of the person, or
- (b) where the person dies after that commencement:
  - (i) a surviving spouse of the person, or
  - (ii) if there is no surviving spouse of the person—a father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, brother, sister, half-brother or half-sister of the person.

### **8A Power to vary awards for certain purposes**

Where a person and the person's spouse (if any) or a person or the person's spouse (if any) would, but for the weekly payments of compensation payable to such person under any award made before or after the commencement of the *Workers' Compensation (Silicosis) Amendment Act 1953* by the Silicosis Committee or the board under this Act or under any award made by a joint committee constituted under a scheme made under the *Workmen's Compensation (Silicosis) Act 1920*, be qualified to receive an age, invalid or widow's pension under the *Social Services Consolidation Act 1947*, of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament, or any other pension, allowance or benefit under any Act or an Act of that Parliament, the board may, in order that such person and the person's spouse (if any) or such person or the person's spouse (if any) may become so qualified, make an order directing that the weekly payments of compensation payable to such person under that award shall be such amount, less than that prescribed under this Act or any amendment thereof, as the board may specify in the order. While such order remains in force the compensation payable from the Fund to such person under the award shall, notwithstanding anything elsewhere contained in this Act or any amendment thereof, be the amount specified in the order.

### **8AA Compensation not payable in certain circumstances**

- (1) In this section **prescribed engagement** means engagement (whether before or after the commencement of Part 2 of the *Workers' Compensation (Dust Diseases) Amendment Act 1967*) in an occupation:
  - (a) as an employee within the meaning of the *Commonwealth Employees Compensation Act 1930* of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament, or
  - (b) under a contract of service or apprenticeship outside New South Wales.
- (2)
  - (a) This subsection applies to any person who has received or is receiving compensation under any Act or ordinance of the Commonwealth of Australia or any State (other than New South Wales) or Territory of the Commonwealth of Australia or under any law of any country outside the Commonwealth of Australia in respect of:
    - (i) the person's disablement for work from a dust disease contracted in the course of a prescribed engagement, or
    - (ii) the death of another person from a dust disease contracted in the course of a prescribed engagement.
  - (b) Subject to this section, but notwithstanding anything elsewhere contained in this Act, no person to whom this subsection applies shall, if the person or, as the case

may be, the person in respect of whose death the person has received or is receiving compensation as aforesaid was not after the cessation of the person's prescribed engagement engaged as a worker in an occupation to the nature of which the disease was due, be entitled to compensation from the Fund for that part of the person's disablement in respect of which the person has so received or is so receiving compensation, or for the death from the disease of that other person, as the case may be.

- (3) Every person in receipt of or claiming compensation from the Fund in respect of his or her total or partial disablement for work from a dust disease or the death of another person from a dust disease shall, on receiving any compensation under an Act (other than this Act), ordinance or other law referred to in subsection (2) in respect of his or her total or partial disablement for work from the disease or the death from the disease of that other person, as the case may be, or on being notified of his or her entitlement to any compensation in respect of such disablement or death by the person, authority or body who or which would be liable under such Act, ordinance or law to pay the same, inform the board of such receipt or notification within 7 days thereafter and if the person does not do so shall be guilty of an offence against this Act and be liable to a penalty not exceeding 1 penalty unit.
- (4) The board may, if it is of the opinion that any person (in this subsection called the claimant) claiming or receiving compensation from the Fund in respect of the person's total or partial disablement for work from a dust disease is or may be entitled to other compensation in respect of that disablement or death, as the case may be, require the claimant to take all appropriate and reasonable steps to claim and recover such other compensation and may, if it is satisfied that the claimant having been so required has not complied with such requirement, make an order reducing any compensation payable to the person from the Fund in respect of such disablement or death by such amount or weekly amounts as the board may in its discretion determine, not exceeding the amount or amounts the person's entitlement to which would in the opinion of the board be divested by subsection (2) if the person had received or were receiving that other compensation, and may at any time rescind any such order. While any such order remains in force the compensation payable to the claimant in respect of such disablement or death, as the case may be, shall, subject to this section but notwithstanding anything elsewhere contained in this Act, be reduced by the amount or amounts specified in the order.

In this subsection ***other compensation*** means, in relation to any claimant, compensation the receipt of which would under subsection (2) divest in whole or in part the claimant's entitlement to compensation from the Fund.

- (5) No person shall be liable by virtue of any provisions of this section to repay any money paid from the Fund.

### **8B Interim award**

- (1) The board may, where it is satisfied that compensation is payable under this Act to any person, and pending its final determination as to the amount of such compensation, make an interim award for the payment of such amount of compensation to that person as does not exceed the least compensation to which the person is, in the opinion of the board, entitled.
- (2) Upon the making of an award in favour of such person pursuant to section 8 (1), the interim award in such person's favour shall terminate and the amounts which have been paid under the interim award shall be deducted from the amount payable under the award made under that subsection.
- (3) An interim award made in favour of any person may be terminated by the board at any time before the making of an award in favour of that person pursuant to section 8 (1).

### **8C Power to terminate or vary awards**

Where the board is satisfied that by reason of any mistake of law or of fact an award was wrongly made or any amount of compensation specified in an award was wrongly calculated, it may terminate or vary such award, and the compensation payable thereunder, accordingly.

### **8D Power to resume weekly payments ended under Principal Act**

Where either before or after the commencement of the *Workers' Compensation (Silicosis) Amendment Act 1957*, any weekly payments to any person made under this Act have been ended pursuant to section 60 of the *Workers' Compensation Act 1926* or section 55 of the *Workers Compensation Act 1987*, as applied by this Act, and the board, upon an application for resumption of such weekly payments made by such person, is satisfied that such weekly payments would, if they were in force, not be ended pursuant to such powers, the board may resume making weekly payments to such person of such amount not exceeding the maximum provided by this Act as the board may determine.

### **8E Reimbursement of compensation from negligent third parties**

- (1) **Purpose of section** The purpose of this section is to provide the board with rights to be reimbursed for compensation paid or payable by it where damages are recovered or recoverable, being rights that correspond in certain respects to those available to an employer (or an employer's insurer) under section 151Z of the *Workers Compensation Act 1987*.
- (2) **Application of section** This section applies where a worker suffers disablement or death from a dust disease.
- (3) **Reimbursement where damages recovered** If:

- (a) a person (the **first person**) recovers damages from some other person (the **second person**) in respect of the disablement or death pursuant to the final determination of the relevant proceedings, and
- (b) there is deducted from the damages the amount of any compensation already paid to the first person under this Act, or the present value of future benefits payable to the first person under this Act, or both,

the following provisions have effect:

- (c) the second person is liable to pay to the board an amount equal to the amount or amounts so deducted,
- (d) the amount that the second person is liable to pay under this subsection is payable within 42 days after recovery of the damages or within such other period as is provided by Schedule 1A or prescribed by the regulations or as is (subject to the regulations) allowed by the board,
- (e) the amount that the second person is liable to pay under this subsection, or any unpaid portion of it, together with interest as provided by Schedule 1A, is recoverable by the board in a court of competent jurisdiction as a debt owing to the board.

(4) **Reimbursement where damages not sought to be recovered** If:

- (a) the dust disease for which compensation is payable under this Act to a person (the **first person**) was caused under circumstances creating a liability in some other person (the **second person**) to pay damages for loss in respect of the disablement or death, and
- (b) the first person has not recovered any such damages, and proceedings are not pending for their recovery, and
- (c) the first person has received compensation under this Act,

the following provisions have effect:

- (d) the board may but is not required to take action to be indemnified, by the second person, for the amount of any compensation already paid to the first person under this Act, being an indemnity limited to the amount of those damages to the extent that they are damages for economic loss,
- (e) a certificate executed by the board and certifying that a specified amount is the amount of compensation paid as referred to in paragraph (d) is (without proof of its execution) admissible in any proceedings and is evidence of the matters certified in the certificate,
- (f) if two or more persons are so liable to pay those damages, they are jointly and

severally liable under the indemnity,

- (g) all questions relating to matters arising under this subsection are, in default of agreement, to be settled by proceedings in the Dust Diseases Tribunal or by arbitration if the Tribunal so orders.

(5) **Persons affected by section** For the purposes of this section:

- (a) a "first person" can be the worker or another person, and
- (b) a "second person" cannot be the worker's employer.

(6) **Joint liability—employer** If:

- (a) the first person takes or is entitled to take proceedings to recover damages from the worker's employer as joint tortfeasor or otherwise, in addition to taking or being entitled to take proceedings to recover damages from the second person, and
- (b) the second person is entitled to recover from the worker's employer any contribution towards the damages recovered or would be entitled to do so if proceedings to recover those damages were taken,

the following provisions have effect:

- (c) the amount that the second person is liable to pay to the board under subsection (3) or the amount for which the second person can be required to indemnify the board under subsection (4) is to be reduced by the same proportion as that contribution bears to the amount of those damages,
- (d) the second person is not entitled to recover from the worker's employer any contribution towards the amount paid or payable to the board by the second person.

(7) **Joint liability—non-employer** If:

- (a) the first person takes or is entitled to take proceedings to recover damages from another person as joint tortfeasor or otherwise (not being the worker's employer), in addition to taking proceedings to recover damages from the second person, and
- (b) the second person is entitled to recover from that other person any contribution towards the damages recovered,

the following provisions have effect:

- (c) the second person is entitled to recover from that other person a contribution towards the amount that the second person is liable to pay under subsection (3), being a contribution that bears the same proportion to that amount as the contribution towards the damages recovered bears to the amount of those

damages,

- (d) the second person is entitled to recover from that other person that contribution towards the amount paid or payable to the board by the second person,
- (e) the second person is entitled to recover that contribution whether or not that other person is or was a party to the proceedings taken by the first person to recover the damages from the second person.

(8) In a case in which the deduction from damages referred to in subsection (3) (b) is not apparent or readily ascertainable from the terms of any judgment or award in respect of the damages, the amount of the deduction is as determined in accordance with Schedule 1A.

(9) The regulations may make provision for or with respect to:

- (a) the determination of the amount of any deduction from damages referred to in subsection (3) (b), being provisions not inconsistent with the provisions of Schedule 1A, and
- (b) requiring (in addition to the requirements of Schedule 1A) the provision to the board of information or documents by a person from whom or by whom damages in respect of disablement or death from a dust disease are recovered or recoverable, being information or documents relevant to the determination of any matter in connection with the operation of this section or Schedule 1A, and
- (c) exempting classes of persons or cases from the operation of all or specified provisions of this section or Schedule 1A.

(9A) Schedule 1A has effect for the purposes of this section.

(10) **Definitions** In this section and Schedule 1A:

**damages** means damages whether or not payable under an award or judgment, and includes damages payable under a settlement, but does not include damages of a class excluded by the regulations from this definition.

**damages for economic loss** means damages other than damages for non-economic loss as defined in section 12D of the [Dust Diseases Tribunal Act 1989](#).

**employer**, in relation to a worker, means a person who was the worker's employer at any relevant time, and includes:

- (a) a person who is vicariously liable for the acts of the employer, and
- (b) a person for whose acts the employer is vicariously liable.

**final determination**, in relation to proceedings, includes a final determination by judgment, verdict, award, settlement, agreement, dismissal, discontinuance or

otherwise.

#### **8F (Repealed)**

#### **8G Proceedings**

- (1) Proceedings for an offence against this Act or the regulations, other than an offence under section 6 (7E), may be taken and prosecuted by any person acting with the authority of the Minister.

In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be prima facie proof of such authority without proof of the Minister's signature.

- (2) All proceedings for offences against this Act or the regulations may be disposed of summarily before the Local Court.

#### **8H Inspectors**

- (1) The Governor may appoint inspectors under this Act.
- (2) Every inspector shall be furnished with a certificate of appointment, and on applying for admission to any premises or place which an inspector is empowered by this section to enter, shall, if required, produce such certificate to the occupier.
- (3) The duties of inspectors shall be to obtain and furnish to the Chairperson of the board information in relation to:
  - (a) the payment of the contributions referred to in section 6 (6), and matters affecting the liability of any insurer to pay such contributions,
  - (b) matters arising under any application to the board or relevant to the payment of compensation under this Act.

In the exercise of such duties inspectors shall be subject to direction by the Chairperson of the board.

- (4) For the purpose of obtaining any information referred to in subsection (3) an inspector may, subject to this section, at any reasonable times:
  - (a) inspect any premises of an employer,
  - (b) require an employer to produce for his examination, and may examine, any records required by the Principal Act to be kept by that employer,
  - (c) examine any worker as to the duties, wages, and hours of work of the worker and other matters related to his employment,
  - (d) require an insurer to produce for his examination, and may examine, books, returns, proposals, other documents and records relating to the issue or renewal of



policies of insurance under the Principal Act, and to the receipt by the insurer of premiums for such issue or renewal, and

- (e) exercise the powers conferred on the WorkCover Authority or an authorised officer by section 238 of the 1998 Act.
- (5) No inspector shall have any authority under this section to enter a private dwelling-house, or the land used in connection therewith, unless some manufacture or trade is carried on therein or thereon.
- (6) Every person who wilfully delays or obstructs an inspector in the exercise of any power conferred on the inspector by this section, or who fails to produce to an inspector any record, policy, book, return, proposal, or document which that person is required pursuant to this section to produce, or who conceals or prevents any person from appearing before or being examined by an inspector, shall be guilty of an offence against this Act and be liable to a penalty not exceeding 20 penalty units in the case of a natural person or 50 penalty units in the case of a corporation.

## **8I Appeals**

- (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 District Court in accordance with rules of Court, and
  - (d) the District Court shall have jurisdiction to hear and determine the appeal.
- (1A) An appeal under subsection (1) must be made within 6 months after notice of the decision appealed against has been given to the appellant.
- (2), (2A) (Repealed)
- (3) The board:
  - (a) is a necessary party to an appeal under this section, and
  - (b) shall give effect to the decision on such an appeal.

## **9 Allowances for "hard luck" cases**

- (1) All persons who prior to the commencement of this Act were in receipt of payments as "hard luck" cases or ex-beneficiaries from the Fund established under the *Workmen's*

*Compensation (Silicosis) Scheme, No 1 of 1938*, as amended by subsequent schemes, in accordance with any decision of the committee administering such scheme shall, where such payments were, immediately before the commencement of Part 2 of the [Workers' Compensation \(Dust Diseases\) Amendment Act 1967](#), being continued under this section as enacted immediately before that commencement, be entitled to continue to receive such payments from the Fund established under this Act, in accordance with such decision until such time as such payments are diminished or terminated by the board.

- (2) As from the date of the commencement of the [Workers' Compensation \(Silicosis\) Amendment Act 1942](#), the persons mentioned in subsection (1), and their dependants, shall be deemed to be entitled to receive compensation payments in accordance with the provisions of this Act.

#### **9A Reimbursement of workers for travelling expenses associated with medical examinations**

- (1) A worker who is required under this Act to submit for a medical examination is entitled to be reimbursed by the board for:
  - (a) the amount of any wages lost by the worker by reason of submitting for examination, and
  - (b) the costs of any fares, travelling expenses and maintenance necessarily and reasonably incurred in submitting for examination.
- (2) The regulations may make provision for or with respect to payments to workers by the board under this section.

#### **10 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of subsection (1), the Governor may make regulations:
  - (a)
    - (i) requiring persons before being employed in any specified dust occupation to submit themselves to medical examination,
    - (ii) prescribing the physical standard requirements of pre-employment medical examination of workers under this Act,
    - (iii) regulating or prohibiting the employment in any specified dust occupation of workers who, upon medical examination, are found to be susceptible to a dust

disease,

(iv) requiring workers engaged in any specified dust occupation to submit themselves to periodical medical examination,

(iva) requiring persons who have been examined by the medical authority and would but for the Principal Act be entitled to compensation under this Act to submit themselves for periodical medical examination,

(v) prescribing that any or all of the preceding requirements shall be conditions precedent to compensation from the Fund,

(b)

(i) regulating the procedure to be followed in respect of applications for compensation,

(ii) prescribing the form of registers and general forms to be used,

(iii) regulating the procedure at meetings of the board,

(b1) requiring persons to furnish to the board such information as may be specified in the regulations and such other information as the board may require, in relation to the employment and remuneration of applicants for awards of compensation under this Act, of persons receiving compensation under such awards, of persons claimed to be dependent on any such applicant or person receiving compensation, and of persons in respect of whose death application is made for such awards,

(b2) prescribing as a dust occupation any industry or process (other than an industry or process carried on in mines) that is of such a nature that workers engaged therein are exposed to the risk of contracting a dust disease,

(c) prescribing measures to be taken by employers and workers for the prevention or elimination of the risk of contracting a dust disease,

(d) generally giving effect to the purposes of this Act,

(e) imposing any penalty not exceeding 1 penalty unit for any breach of such regulations.

(3) The Governor may, by regulation:

(a) amend Schedule 1 by inserting therein the name of any disease or by omitting therefrom the name of any disease, or

(b) omit Schedule 1 and substitute a different Schedule specifying diseases for the purposes of the definition of "Dust disease" in section 3.

(4), (5) (Repealed)

## **11 Effect of extending Act to other dust diseases: Baker v Australian Asbestos Insulations Pty. Ltd. overruled**

- (1) If Schedule 1 is amended (whether by Act or regulation) so as to include a disease as a dust disease within the meaning of this Act:
  - (a) the amendment operates to extinguish an entitlement to compensation under the Principal Act in respect of that disease existing immediately before the amendment unless an application for compensation in respect of the entitlement is made before the amendment, and
  - (b) this Act is to be taken to have always applied to the dust disease.
- (2) Subsection (1) (a) does not operate to extinguish a person's entitlement to compensation if the person does not have an entitlement to compensation under this Act in respect of the matter concerned.
- (3) This section applies to an amendment made to Schedule 1 whether before or after this section commences (including that made by the *Workers' Compensation (Dust Diseases) Amendment Act 1983*) but not so as to affect an entitlement to compensation under the Principal Act for which an application for compensation has been made before this section commences.
- (4) In this section, a reference to the amendment of Schedule 1 includes a reference to the substitution of Schedule 1.

## **12 Repeal of Workmen's Compensation (Broken Hill) Act 1920 No 36**

The *Workmen's Compensation (Broken Hill) Act 1920* is repealed.

## **13 Savings, transitional and other provisions**

Schedule 2 has effect.

## **Schedule 1 Dust diseases**

(Section 3)

Aluminosis  
Asbestosis  
Asbestos induced carcinoma  
Asbestos related pleural diseases  
Bagassosis  
Berylliosis  
Byssinosis  
Coal dust pneumoconiosis  
Farmers' lung  
Hard metal pneumoconiosis  
Mesothelioma  
Silicosis

Silico-tuberculosis

Talcosis

## **Schedule 1A Reimbursement of compensation from negligent third parties**

(Section 8E)

### **1 Application of Schedule**

This Schedule applies to proceedings referred to in section 8E for damages in respect of disablement or death that:

- (a) were commenced on or after 1 January 2002, or
- (b) were commenced before 1 January 2002 but were not finally determined before that date.

### **2 Definitions**

In this Schedule:

**first person** and **second person** have the same meanings as in section 8E (3).

### **3 Notification of final determination of proceedings**

- (1) A person (**the defendant**) against whom proceedings to which this Schedule applies have been taken must notify the board in writing of any award, judgment, settlement or agreement resulting in the final determination of the proceedings.
- (2) The notification must be given to the board within 28 days after the final determination.
- (3) The notification must be accompanied by the following documents:
  - (a) a document or documents that set out the following particulars:
    - (i) the name, address and date of birth of the person who commenced the proceedings (and if more than one, those particulars for each person),
    - (ii) a statement as to whether or not the defendant was sued in the capacity of employer,
    - (iii) a statement as to whether or not the defendant has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
    - (iv) the amount and extent of any such contribution or other payment,
    - (v) if a contribution or other payment (as referred to in subparagraphs (iii) and (iv)) has been or is to be made—a statement as to whether or not an amount

- has been deducted from the contribution or payment as referred to in section 8E (3) (b),
- (vi) the amount and extent of any such deduction,
  - (vii) the names and addresses of all parties to the award, judgment, settlement or agreement,
  - (viii) a statement as to whether or not any person against whom the proceedings were brought (other than the defendant) has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
  - (ix) the amount and extent of any such contribution or other payment,
  - (x) if a contribution or other payment (as referred to in subparagraphs (viii) and (ix)) has been or is to be made—a statement as to whether or not an amount has been deducted from the contribution or other payment as referred to in section 8E (3) (b),
  - (xi) the amount and extent of any such deduction,
- (b) a copy (whether in electronic or hard copy form) of the following documents:
- (i) the final statement of claim in the proceedings,
  - (ii) the final particulars of damage filed by the person or persons who commenced the proceedings,
  - (iii) any award, judgment, terms of settlement, agreement, or other document (such as a deed of release) evidencing the terms of the final determination of the proceedings.
- (4) It is sufficient compliance with subclause (3) (a) to the extent that documents provided under subclause (3) (b) contain the particulars required by subclause (3) (a).
- (5) Where there is more than one defendant in proceedings to which this Schedule applies, each defendant is required to comply with this clause. In such a case, the board may consent to a defendant complying with this clause on behalf of other defendants in the proceedings.
- (6) The board may at any time by notice in writing require a defendant in proceedings to which this Schedule applies to provide to the board, within 21 days or such longer period as the board may allow, specified information or documents concerning the determination of the proceedings.
- (7) A person who fails to comply with a requirement imposed by or under this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

- (8) The board may exempt any particular proceedings or class of proceedings from the requirements as to notification under this clause. Any exemption given for a class of proceedings is to be publicised in a manner determined by the board and any revocation or variation of such an exemption must be similarly publicised.

#### 4 Determination of amount of compensation

In a case in which the deduction from damages referred to in section 8E (3) (b) is not apparent or readily ascertainable from the terms of any judgment or award in respect of the damages, the amount of the deduction is the amount determined in accordance with, and subject to, the following principles:

- (a) Subject to the following paragraphs, the amount of compensation (the **deducted compensation**) taken to have been deducted from the damages payable by the second person to the first person is the total of the following amounts as assessed by the board:
- (i) the amount of compensation paid by the board to, or on behalf of, the first person up to the date of final determination,
  - (ii) the present value of future benefits payable by the board to, or on behalf of, the first person after that date (where the assessment of those future benefits is based on the assumption that the medical condition of the worker as to disablement and life expectancy will remain unchanged),

less any reduction required by section 8E (6).

- (b) The board may by notice in writing served on the second person give the second person notice (an **assessment notice**) of the amount of the deducted compensation assessed by the board under paragraph (a). An assessment notice must include the board's method of calculation and reasons for the assessment.

**Note—**

When assessing the amount of the deducted compensation under paragraph (a), the board does not include any damages for non-economic loss.

- (c) If a second person disputes the assessment of an amount of deducted compensation set out in an assessment notice, the second person may request that the board reconsider the assessment (a **reconsideration request**).
- (d) A reconsideration request must:
- (i) be in writing in the form approved by the board, and
  - (ii) be lodged with the board within 28 days after the service on the person of the assessment notice.

- (e) In reconsidering an assessment, the board may consider the advice of accountants, actuaries, legal practitioners and other persons.
- (f) Following the reconsideration of the assessment, the board may:
  - (i) confirm the original assessment of the amount of the deducted compensation made under paragraph (a), or
  - (ii) if the board considers that a lesser amount of deducted compensation is appropriate—issue an amended assessment notice setting out that lesser amount.
- (g) As soon as practicable (and in any event within 28 days) after the lodgment of a reconsideration request, the board must notify the second person in writing of the outcome of the reconsideration. The notification must include the board's reasons for its decision following the reconsideration.
- (h) The second person is not entitled to make more than one reconsideration request in relation to an amount of deducted compensation.

## 5 Interest

- (1) Interest is payable on an amount that the second person is liable to pay under section 8E (3) (e) at the rate prescribed for the time being under section 101 of the *Civil Procedure Act 2005* with respect to the payment of interest on a judgment debt.
- (2) That interest begins to run from:
  - (a) in a case in which the deduction from damages referred to in section 8E (3) (b) is apparent or readily ascertainable from the terms of any judgment or award in respect of the damages—the date of expiry of the 42 day period referred to in section 8E (3) (d), or
  - (b) in any other case:
    - (i) if the second person has not lodged a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—the date of expiry of the 42 day period referred to in clause 6 (a) (being 42 days after the service of an assessment notice referred to in clause 4 (b)), or
    - (ii) if the second person has lodged a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—the date of expiry of the 28 day period referred to in clause 6 (b) (being 28 days after the second person is notified by the board of the outcome of the reconsideration).
- (3) If the board has issued an amended assessment notice in accordance with clause 4 (f) (ii), the amount of interest is to be calculated on the amount of deducted compensation set out in that amended notice.



## 6 Reimbursement period

For the purposes of section 8E (3) (d), in a case in which the deduction from damages referred to in section 8E (3) (b) is determined in accordance with clause 4, an amount that the second person is liable to pay to the board under section 8E (3) must be paid:

- (a) if the second person does not lodge a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—within 42 days after the service of the assessment notice determining the amount of compensation, or
- (b) if the second person lodges a reconsideration request before the expiry of the 28 day period referred to in clause 4 (d) (ii)—within 28 days after the second person is notified by the board of the outcome of the reconsideration.

## Schedule 2 Savings, transitional and other provisions

(Section 13)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of:

*WorkCover Legislation Amendment Act 1995*

*Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998*

*Workers Compensation Legislation Amendment Act 2003* to the extent that it amends this Act

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

## **1A Effect of GST**

- (1) Without limiting clause 1, the regulations may contain provisions of a savings or transitional nature that may be necessary or convenient as a consequence of the enactment of the Acts of the Commonwealth that impose, or relate to the imposition of, goods and services tax.
- (2) If the regulations so provide, a provision referred to in subclause (1) has effect despite any other provision of this Act.
- (3) A regulation made pursuant to this clause, unless sooner revoked or otherwise ceasing to have effect, ceases to have effect on 1 July 2003.
- (4) A regulation made pursuant to this clause may not be made or published after 1 July 2003.

## **Part 2 Provisions consequent on enactment of [WorkCover Legislation Amendment Act 1995](#)**

### **2 Definitions**

In this Part:

***Broken Hill Compensation Fund*** means the fund established under the scheme of the Broken Hill Act.

***Broken Hill Act*** means the [Workmen's Compensation \(Broken Hill\) Act 1920](#), as in force immediately before its repeal.

### **3 Transfer of balance of Broken Hill Compensation Fund to Dust Diseases Fund**

The balance of and any investments to the credit of the Broken Hill Compensation Fund immediately before the repeal of the Broken Hill Act are, on that repeal, transferred to the Fund established under this Act and any liability of the Broken Hill Compensation Fund becomes, on and from that repeal, a liability of the Fund established under this Act.

### **4 Continuation of entitlements under Broken Hill Act**

- (1) On the repeal of the Broken Hill Act the scheme of compensation under that Act ceases to have effect.
- (2) Any person who, immediately before that repeal, was in receipt of compensation under that Act, is entitled, on and from the repeal, to receive compensation from the Fund constituted under this Act in accordance with this Act.

### **5 Applications and appeals under Broken Hill Act**

- (1) Any application for an award of compensation under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal,

as if it were an application for compensation under this Act.

- (2) An appeal to the Industrial Court from an order, determination or award of compensation of the joint committee under the Broken Hill Act that is pending immediately before the repeal of that Act is to be dealt with, on that repeal, as if it were an appeal under this Act from an order, determination or award of compensation of the board.

#### **6 Functions exercised by joint committee under Broken Hill Act**

Anything done by the joint committee under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the board under this Act.

#### **7 Functions exercised by medical authority under Broken Hill Act**

Anything done by the medical authority under the Broken Hill Act that had any force or effect immediately before the repeal of that Act is taken, on and from that repeal, to have been done by the medical authority under this Act.

### **Part 3 Provisions consequent on enactment of [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#)**

#### **8 Definition**

In this Part:

**amending Act** means the [Workers Compensation Legislation Amendment \(Dust Diseases and Other Matters\) Act 1998](#).

#### **9 Reimbursement of compensation—insurance policies**

- (1) If a person liable to pay an amount to the board under subsection (3) of section 8E (which was inserted by the amending Act) or required to indemnify the board for an amount under subsection (4) of that section is or was covered by a policy of insurance or indemnity (issued or effective before the commencement of that section) in respect of the damages recovered or recoverable by another person, the following provisions have effect:
  - (a) The policy is taken also to cover that liability to pay the amount to the board or that requirement to indemnify the board.
  - (b) However, the policy remains subject to any monetary limits in respect of the maximum amount payable by the insurer in respect of any relevant cause of action.
- (2) Subclause (1) applies in relation to causes of action arising before but not after the

commencement of section 8E.

- (3) However, subclause (1) does not apply in relation to a cause of action where proceedings were determined before the commencement of section 8E.

#### **10 Reimbursement of compensation—causes of action**

- (1) Section 8E (which was inserted by the amending Act) applies in relation to causes of action arising before or after the commencement of that section, including where proceedings were pending at that commencement.
- (2) However, section 8E does not apply in relation to a cause of action where proceedings were determined before the commencement of that section.

### **Part 4 Provisions consequent on enactment of [Workers Compensation Legislation Amendment Act 2003](#)**

#### **11 Reimbursement of compensation from negligent third parties**

- (1) The amendments made to section 8E by the [Workers Compensation Legislation Amendment Act 2003](#), and Schedule 1A as inserted by that Act, are taken to have had effect on and from 1 January 2002.
- (2) Any act, matter or thing done or purporting to have been done under or for the purposes of Part 3 of the [Workers' Compensation \(Dust Diseases\) Regulation 1998](#) is, to the extent that it would have been validly done had it been done under this Act as amended by the [Workers Compensation Legislation Amendment Act 2003](#):
  - (a) is taken to be (and always to have been) validly done, and
  - (b) is taken to have been done under and for the purposes of section 8E as amended by, and Schedule 1A as inserted by, the [Workers Compensation Legislation Amendment Act 2003](#).
- (3) This clause does not apply in respect of relevant proceedings referred to in section 8E (3) (a) that are the subject of any proceedings against the board pending in the Supreme Court on the date of introduction into Parliament of the Bill for the [Workers Compensation Legislation Amendment Act 2003](#). This Act and Part 3 of the [Workers' Compensation \(Dust Diseases\) Regulation 1998](#) continue to apply in respect of those relevant proceedings as if the [Workers Compensation Legislation Amendment Act 2003](#) had not been enacted.

### **Part 5 Provisions consequent on enactment of [Workers Compensation and Other Legislation Amendment Act 2004](#)**

#### **12 Payment of funeral expenses**

Section 8 (2A), as substituted by the [Workers Compensation and Other Legislation](#)

*Amendment Act 2004*, extends to the death of a person occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of the substitution.