



New South Wales

Workers' Compensation (Dust Diseases) Amendment Bill 2022

Explanatory note

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

Overview of Bill

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

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

Outline of provisions

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

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

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

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

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

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

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

Proposed clause 20 provides that, for the purposes of the Dust Diseases Act, the WC Act, section 37(1)(b) and (c), being part of the 2012 version of the section that applies to the Dust Diseases Act, is taken to extend to an injured worker in relation to any period of partial incapacity for work, but only if the injured worker is retired by reason of—

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

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

- (a) the amount estimated by the Australian Bureau of Statistics as the average weekly total cash earnings of all employees in New South Wales for the week immediately before the worker was incapacitated, or
- (b) if the Australian Bureau of Statistics fails or ceases to estimate the amount referred to in paragraph (a)—the amount or the amount determined in the way or by reference to matters, or both, prescribed by regulations under the Dust Diseases Act.

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

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

Schedule 2 Amendment of Workers Compensation Act 1987 No 70

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