

FIRST PRINT

**WORKERS COMPENSATION LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Occupational Health and Safety Legislation (Amendment) Bill 1993.

The objects of this Bill are:

- (a) to improve work-related damages entitlements by:
 - removing the so-called “verbal threshold” for damages for non-economic loss; and
 - clarifying and extending the entitlement to damages for the cost of certain home care services; and
 - specifying that the cost of respite care for seriously injured workers can be included in a claim for damages; and
- (b) to provide that the indexation of workers compensation benefits cannot result in an amount of a benefit being less than the previously adjusted amount; and
- (c) to limit the potential for the under-declaration of wages, and to ensure that correct insurance premiums are paid, by:
 - providing that wage records kept by employers (which are used to calculate insurance premiums) are, in certain circumstances, also to include shift and similar work records relevant to the calculation of premiums; and
 - not allowing wage records to be combined with other records in a manner that would prevent them being disclosed because of another law; and
 - requiring employers in certain circumstances to supply, or make available for inspection, records of any contracts under which employers have paid contractors who perform work; and

Workers Compensation Legislation (Miscellaneous Amendments) 1993

- (d) to clarify certain anomalies relating to lump sum compensation entitlements; and
- (e) to clarify the application of certain transitional provisions; and
- (f) to make other miscellaneous changes to the Workers Compensation Act 1987 of an ancillary, consequential or minor nature (including changes by way of statute law revision); and
- (g) to amend the Workers' Compensation (Dust Diseases) Act 1942:
 - to extend the scheme of compensation under that Act to workers at or about Broken Hill mines who contract dust-related cancer (i.e. mesothelioma); and
 - to enable the Workers' Compensation (Dust Diseases) Board to delegate its functions under the Act; and
 - to enable workers who are required to submit themselves for medical examination under that Act to be reimbursed for travelling and other expenses; and
 - to make other miscellaneous changes to that Act of an ancillary, consequential or minor nature.

A detailed explanation of each amendment is set out in the Bill after the amendment concerned.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on assent (except certain amendments relating to employers' wage records, and to reimbursing workers' travelling expenses under the Workers' Compensation (Dust Diseases) Act 1942, which are to commence on a day or days to be appointed by proclamation).

Clause 3 gives effect to the Schedules of amendments to the Workers Compensation Act 1987.

Clause 4 gives effect to the Schedule of amendments to the Workers' Compensation (Dust Diseases) Act 1942.

Clause 5 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedules 1 and 2 contain amendments to the Workers Compensation Act 1987 to give effect to the objects described in paragraphs (a)–(f) above.

Schedule 3 contains amendments to the Workers' Compensation (Dust Diseases) Act 1942 to give effect to the objects described in paragraph (g) above.

FIRST PRINT

**WORKERS COMPENSATION LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Workers Compensation Act 1987 No. 70
4. Amendment of Workers' Compensation (Dust Diseases) Act 1942 No. 14
5. Explanatory notes

SCHEDULE 1—AMENDMENTS TO WORKERS COMPENSATION ACT 1987
RELATING TO COMMON LAW RIGHTS

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS COMPENSATION
ACT 1987

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO WORKERS'
COMPENSATION (DUST DISEASES) ACT 1942

**WORKERS COMPENSATION LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Workers Compensation Act 1987 to make further provision with respect to workers' entitlements to damages, and employers' wage records; to amend the Workers' Compensation (Dust Diseases) Act 1942; and for other purposes.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993.

5 Commencement

2. This Act commences on the date of assent, except Schedules 2 (13) and 3 (3) and (6), which commence on a day or days to be appointed by proclamation.

Amendment of Workers Compensation Act 1987 No. 70

10 3. The Workers Compensation Act 1987 is amended as set out in Schedules 1 and 2.

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

15 4. The Workers' Compensation (Dust Diseases) Act 1942 is amended as set out in Schedule 3.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in the Schedules to this Act does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO WORKERS
COMPENSATION ACT 1987 RELATING TO COMMON
LAW RIGHTS**

(Sec. 3)

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

Omit section 151G (1).

25 (2) Section 151K (**Damages for economic loss—maximum amount for provision of certain home care services**):

(a) Omit section 151K (1), insert instead:

(1) Compensation, included in an award of damages, for the value of services of a domestic nature or services relating to nursing and attendance:

30

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 1—AMENDMENTS TO WORKERS COMPENSATION
ACT 1987 RELATING TO COMMON LAW RIGHTS—*continued*

- (a) which have been or are to be provided by another person to the injured worker; and
- (b) for which the injured worker has not paid or is not liable to pay, 5
must not exceed the amount determined in accordance with this section.
- (b) Omit section 151K (2) and (4).
- (c) At the end of the section, insert: 10
(7) Unless evidence is adduced to the contrary, the court is to assume that the value of the services is the maximum amount determined under subsection (5) or (6), as the case requires.
(8) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1). 15
- (3) Section 151KA:
After section 151K, insert:
Respite care 20
151KA. An award of damages may include compensation for necessary and reasonable respite care in respect of a worker who is seriously injured and in need of constant care over a long term.
- (4) Schedule 6, Part 14 (**Savings and transitional provisions relating to common law remedies**): 25
After clause 2 of Part 14, insert:
Amendments relating to “verbal threshold”, home care services and respite care
3. The amendments to Division 3 of Part 5 of this Act made by Schedule 1 to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993 apply to injuries whether received before or after the date of assent to that Act and to court proceedings whether or not commenced before that date. However, those amendments do not apply to any such injury for which an award of damages has been made by a court before that date. 30 35

Workers Compensation Legislation (Miscellaneous Amendments) 1993

**SCHEDULE 1—AMENDMENTS TO WORKERS COMPENSATION
ACT 1987 RELATING TO COMMON LAW RIGHTS—*continued***

Explanatory note—Schedule 1

5 At present, section 151G (1) provides that damages are not to be awarded for
non-economic loss (e.g. pain and suffering) in common law proceedings for
work-related injuries unless the injured worker's ability to lead a normal life is
significantly impaired by the injury suffered by the worker. **Schedule 1 (1)** removes this
so-called "verbal threshold" requirement. The effect of the amendment will be that any
10 worker who suffers an injury falling within the remaining threshold requirements of
section 151G will be eligible to claim damages for non-economic loss without having to
separately demonstrate that the injury causes significant impairment of his or her
"ability to lead a normal life".

15 Section 151K currently restricts damages for home care services provided to an
injured worker by a member of the same household or family as the worker by
providing that such damages are not recoverable for the first 6 months or for the first 6
hours per week in which those services are provided. The section also specifies a
standard method, based on wage statistics, for assessing the maximum amount of those
damages. **Schedule 1 (2)** extends a worker's entitlements by removing the 6 month and
20 6 hour restrictions, and by providing that the services need not necessarily be provided
by a family member. The amendments also provide that the court, in assessing the
amount of compensation to be included in an award of damages, is to assume that the
value of the home care services is the maximum value determined in accordance with
the section (that determination being made by reference to average weekly total earnings
of all workers in the State).

25 **Schedule 1 (3)** inserts proposed section 151KA to enable an award of damages to
include compensation for necessary and reasonable respite care for seriously injured
workers who need long term care. For example, the cost of paying another person to
look after an injured worker while the person who usually cares for the worker takes a
break from that care can be included in an award of damages.

30 **Schedule 1 (4)** provides that the above amendments apply to injuries whether
received before or after the date of assent to the proposed Act and to court proceedings
whether or not commenced before that date, but the amendments do not apply to injuries
in respect of which a court has awarded damages before that date.

35 **SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987**

(Sec. 3)

(1) Section 43 (**Computation of average weekly earnings**):

In section 43 (2) (a), after "award", insert "(“award” having
the same meaning as in section 42)".

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

Explanatory note—Schedule 2 (1)

The amendment makes it clear that the term “award” in section 43 (2) (a) includes various forms of enterprise agreement. This will ensure that workers (and their legal representatives) will be able to obtain from employers details of enterprise agreement wage rates needed to prepare claims for weekly compensation in the same way as they can obtain award wage details.

5

(2) Section 58 (**Refund of weekly payments paid after return to work etc.**):

10

(a) In section 58 (1), after “2 years”, insert “(or such shorter or longer period as the Court considers to be appropriate)”.

(b) After section 58 (3), insert:

(4) Without limiting this section, the Compensation Court may make such orders as it thinks fit for the adjustment of weekly payments of compensation to a worker to take account of any overpayments made to the worker (whether or not in the circumstances referred to in subsection (1)) in respect of any previous period.

15

Explanatory note—Schedule 2 (2)

20

Section 58 enables the Compensation Court to order a refund of compensation overpaid as a result of a return to work by the worker or a change in the worker’s earnings. **Schedule 2 (4) (a)** enables a more flexible time limit for refunds of weekly payments that the Compensation Court can order under section 58. **Schedule 2 (4) (b)** confers a specific discretion on the Court, when awarding or reviewing awards of compensation by way of weekly payments, to make orders allowing reasonable credit for previous overpayments by employers and insurers. The amendments are designed to encourage the advance payment of weekly support by employers and insurers before awards are made and to avoid the recovery of overpayments as debts.

25

(3) Section 65 (**Definitions**):

30

After section 65 (3), insert:

(4) For the avoidance of doubt, the interpretation provisions following the Table to this Division form part of the Table and apply to the interpretation of the losses mentioned in the Table. This subsection is taken to have applied from the commencement of this Division.

35

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

(4) Section 69 (**Addition to Table of further compensable injuries**):

(a) After section 69 (a), insert:

5 (a1) by prescribing provisions applying to the interpretation of any such additional loss; and

(b) From section 69 (b), omit “, as a note to that Table,”, insert instead “other”.

10 (5) Part 3, Division 4, Table (**Compensation for permanent injuries**):

(a) From the Table, omit “NOTES:”, insert instead “INTERPRETATION:”.

(b) From the Table, omit “the Table” wherever occurring, insert instead “this Table”.

15 (c) In paragraph (d) of the Table, after “the hand”, insert “and is to be compensated as a loss, or a proportionate loss, of a single item only (namely, the loss of the hand)”.

(d) After paragraph (d) of the Table, insert:

20 (d1) Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is to be compensated as a loss, or a proportionate loss, of a single item only (namely, the loss of the arm at or above the elbow).

25 (d2) Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is to be compensated as a loss, or a proportionate loss, of a single item only (namely, the loss of the leg at or above the knee).

Explanatory note—Schedule 2 (3)–(5)

30 **Schedule 2 (3)** makes it clear that the provisions following the Table to Division 4 of Part 3 (the so-called “Table of Disabilities”) form part of that Table and apply to the interpretation of the losses mentioned in the Table. **Schedule 2 (4)** and **(5) (a)** and **(b)** are consequential amendments.

35 The Table of Disabilities lists a number of injuries that are generally described in the Table as being “losses” of certain things. A loss can be a physical loss of a thing, or it can be the loss of the use of a thing. The losses are itemised separately in the Table to facilitate the accurate proportionate assessment of an injury.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

**SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—continued**

Doubt has recently been cast over the operation of the Table, the result of which would indicate that workers are entitled to “double dip” in respect of a loss which can be compensated by a combination of items. In particular, the Court of Appeal in *Odlin Shopfitting International v Kaljanac* held that the loss of an arm at or above the elbow (for which an injured worker is entitled to receive up to 80% of the maximum Table amount) meant that the worker, in addition, is entitled to receive up to 75% of the maximum Table amount for the loss of the arm below the elbow. 5

The amendments in **Schedule 2 (5) (c) and (d)** are designed to clarify the operation of the Table of Disabilities and to avoid the anomalous situation of allowing an injured worker to claim twice (or more) for the loss of function extending to the upper part of an arm or leg. 10

(6) Section 80 (Adjustment of amounts of benefits according to award rate of pay index): 15

At the end of the section, insert:

(2) The amount so calculated is (if for any reason it would be less than the amount calculated in respect of the previous adjustment date) to be the same as the amount calculated in respect of the previous adjustment date. 20

Explanatory note—Schedule 2 (6)

The amendment provides that indexed amounts of benefits are not to be less than previously adjusted amounts as a result of, for example, any downward movement in statistical indexes on average rates of pay that are used to index amounts of benefits. In other words, the amendment will avoid the possibility of benefits being reduced as a result of “negative indexation”. 25

(7) Section 92A (Manner of making claim for compensation):

Omit section 92A (4) (c), insert instead:

(c) it is served in any other manner authorised by sections 220 and 363 of the Corporations Law. 30

(8) Section 147 (Miscellaneous provisions):

(a) From section 147 (5), omit “335, 371, 401 and 402 of the Companies (New South Wales) Code”, insert instead “436, 471 and 500 of the Corporations Law”.

(b) From section 147 (6), omit “Companies (New South Wales) Code”, insert instead “Corporations Law”. 35

Explanatory note—Schedule 2 (7) and (8)

The amendments update superseded references to the Companies Code to refer to the corresponding provisions of the Corporations Law.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

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

5 In section 151G (7), after “section 81 (1).”, insert
“However, section 80 (2) does not apply to the amounts of
\$36,000 and \$48,000.”.

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

10 In section 151H (4), after “section 81 (1).”, insert
“However, section 80 (2) does not apply to the amount of
\$48,000.”.

Explanatory note—Schedule 2 (9) and (10)

15 The amendments relate to the amendment made by Schedule 2 (6) and provide that
proposed section 80 (2), which will prevent reduction of benefits as a result of negative
indexation, is not to apply where the benefit concerned is limited by a “minimum
threshold”. The effect of the amendments will be that any beneficial effects of negative
indexation, such as lowering indexed thresholds, can still be allowed to occur.

(11) Section 152 (**Rehabilitation programs to be established by
employers**):

20 (a) Omit section 152 (2) (a), insert instead:

(a) comply with any guidelines determined by the
Authority; and

(b) After section 152 (2), insert:

25 (2A) The Authority may, in determining any such
guidelines, consult with such persons and bodies as the
Authority considers to be appropriate.

(c) From section 152 (3) (c), omit “(with the concurrence of the
Secretary of the Department of Health)”.

Explanatory note—Schedule 2 (11)

30 The amendments provide that guidelines for workplace rehabilitation programs are to
be determined by the WorkCover Authority (instead of being determined jointly by the
Authority, the Director-General of the Department of Health and the Occupational
Health, Safety and Rehabilitation Council). The Authority may, however, consult with
appropriate persons and bodies in determining such guidelines. The amendments also
35 provide that the accreditation of providers of rehabilitation services will no longer
require the concurrence of the Director-General of the Department of Health.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

- (12) Sections 173, 178, 189, 198, 200:
From sections 173 (1) (b), 178 (5), 189 (4), 198 (3) and 200 (4), omit “Companies (New South Wales) Code” wherever occurring, insert instead “Corporations Law”. 5

Explanatory note—Schedule 2 (12)

The amendments update superseded references to the Companies Code to refer to the corresponding provisions of the Corporations Law.

- (13) Section 174 (**Records relating to wages, contracts etc. to be kept and supplied by employers**): 10
- (a) Omit section 174 (1) (c), insert instead:
- (c) such other matters relating to those wages (or otherwise relevant to the calculation of premiums payable under policies of insurance) as may be prescribed by the regulations. 15
- (b) In section 174 (4), after “Act.”, insert “However, it is not to be combined in such a manner as would prevent its disclosure under any law.”.
- (c) After section 174 (6), insert: 20
- (6A) The Authority may, at the request of an insurer who has issued a policy of insurance to an employer, order that the employer supply to, or make available for inspection by, the insurer any records in the employer’s possession relating to any contract (however described) under which the employer has made payments to an individual to perform work during such period (not exceeding 7 years after the work was performed) as is specified in the order. 25
- (6B) An order under subsection (6A) may be made only if the Authority is satisfied that: 30
- (a) the request has been made by the insurer for the purpose of determining whether the correct premium has been paid under the policy of insurance; and
- (b) the information contained in the records has not already been supplied or made available elsewhere under this section or under section 173. 35
- (d) From section 174 (7), omit “or (6)”, insert instead “, (6) or (6A)”.
- (e) In section 174 (8), after “(5)”, insert “or (6A)”.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

**SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—continued**

Explanatory note—Schedule 2 (13)

5 Section 174 presently requires employers to keep wage records relating to workers
(including certain contractors and other persons who are “deemed” by the Act to be
workers) for the purposes of calculating premiums under policies of insurance. To limit
the potential for the under-declaration by employers to their insurers of the wages paid
to workers, **Schedule 2 (13) (a)** provides that the regulations will be able to prescribe
10 additional matters to be included in the records (e.g. numbers of shifts worked and
similar matters relevant to the calculation of certain premiums).

An employer’s wage records under the Act can presently be combined with any
record of wages required to be kept under another Act. **Schedule 2 (13) (b)** provides,
however, that workers compensation wage records cannot be combined in a manner that
would prevent their disclosure because of another law (e.g. they will not be able to be
15 inextricably combined with other records containing confidential tax file numbers that
cannot be disclosed).

Schedule 2 (13) (c) will enable the WorkCover Authority to order an employer to
supply (or make available for inspection) records relating to contracts with individuals
who are paid by the employer to do work. Such an order is to be made, if the Authority
20 is requested to do so by an insurer, for the purpose of determining whether the employer
has paid the correct premium under the policy of insurance. The new provision will
apply in circumstances where the individual is considered by the employer to be an
independent contractor rather than a worker employed by the employer and, accordingly,
the employer has not declared to the insurer (as wages for the purpose of calculating
25 insurance premiums) payments made under the contract. **Schedule 2 (13) (d)** and **(e)** are
consequential amendments.

**(14) Section 190 (Notification of Authority of certain defaults in
relation to insurers):**

30 From section 190 (2) (f), omit “Companies (Acquisition of
Shares) (New South Wales) Code”, insert instead
“Corporations Law”.

Explanatory note—Schedule 2 (14)

The amendment updates a superseded reference to the Companies (Acquisition of
Shares) (New South Wales) Code to refer to the Corporations Law.

35 **(15) Section 231 (Appointment of Authority as agent and attorney
of employer and worker):**

In section 231 (5) and (6), after “an insurer” wherever
occurring, insert “or insolvent insurer”.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

Explanatory note—Schedule 2 (15)

The amendment makes it clear that the references in section 231 (5) and (6) (which relates to the WorkCover Authority's role as agent of the employer and the worker in dealing with claims under the Insurers' Guarantee Fund) to an insurer include an insolvent insurer. This is in keeping with the interpretation (of the existing words) adopted by the Supreme Court in *National Employers Mutual General Insurance Association Limited (in liq.) v GIO*.

5

(16) Schedule 6, Part 2 (**Savings and transitional provisions relating to liability for compensation**):

10

After clause 2 of Part 2, insert:

Diseases of gradual process etc.—“previous” employers' liability to contribute to compensation under section 67 of this Act

15

3. (1) An employer who is liable under section 15 (2) or 16 (2) of this Act to make contributions to the employer by whom compensation is payable under those sections is not liable to contribute to any compensation payable under section 67 of this Act (Compensation for pain and suffering) in respect of any part of the period of 12 months that occurred before the commencement of that section.

20

(2) Despite section 17 (1) (d) of this Act, an employer to whom that paragraph applies is not liable to contribute to compensation payable under section 67 of this Act in respect of such part of the relevant period (as defined in section 17 (1) (e) of this Act) as occurred before the commencement of section 67 of this Act.

25

(3) This clause does not affect any court proceedings which have been determined or commenced before the date of assent to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993.

30

Explanatory note—Schedule 2 (16)

Section 67 provides for the payment in certain circumstances of a lump sum benefit in respect of pain and suffering resulting from injuries occurring after the commencement of Division 4 of Part 3 of the Workers Compensation Act 1987 (30 June 1987). Such benefits may be payable in respect of certain injuries caused by a gradual process (e.g. boilermaker's deafness). Under sections 15, 16 and 17 of that Act, compensation is payable by the worker's current employer or the employer who last employed the worker. Some previous employers are also required to make contributions to the employer by whom compensation is payable. The liability of a previous employer is in respect of a specified period preceding the “deemed” injury date. The amendments

35

40

Workers Compensation Legislation (Miscellaneous Amendments) 1993

**SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued***

will make it clear that a previous employer will not be liable to contribute to compensation for pain and suffering in respect of any part of a preceding period that
5 occurred before 30 June 1987. The amendments do not affect previously determined court proceedings or “pending” court proceedings (i.e. proceedings that have been commenced but not finally disposed of before the date of assent to the proposed Act).

(17) Schedule 6, Part 4 (**Savings and transitional provisions relating to weekly payments of compensation**):

10 After clause 7 of Part 4, insert:

**Refund and other adjustments of weekly payments—
amendments to section 58 of this Act**

8. The amendments to section 58 of this Act (Refund of weekly payments paid after return to work etc.) made by
15 Schedule 2 (2) to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993 extend to weekly payments of compensation made before the date of assent to that Act. However, those amendments do not apply to enable an order under that section (as so amended) to be made in
20 respect of any case in which a court has, before that date, made or refused to make an order in the circumstances referred to in that section (as so amended) or to enable an order to be made in respect of court proceedings commenced before that date.

25 **Explanatory note—Schedule 2 (17)**

The amendment is consequential on the amendments made by Schedule 2 (2).

(18) Schedule 6, Part 6 (**Savings and transitional provisions relating to compensation for non-economic loss (Table of Disabilities)**):

(a) At the end of clause 2 of Part 6, insert:

30 (2) To avoid doubt, section 67 of this Act applies to pain and suffering resulting from injuries to which section 15, 16 or 17 of this Act applies to the extent only to which any such injury is deemed under those provisions to have happened after the commencement of Division 4 of Part 3 of this Act.
35 However, this subclause does not affect any court proceedings which have been determined or commenced before the date of assent to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued*

(b) Before clause 4 of Part 6, insert:

Compensation for further losses—occupational diseases

3AA. (1) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing (being an occupational disease within the meaning of section 71 of this Act), section 71 applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3. 5
10

(2) This clause is enacted to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. 15

(c) At the end of clause 6 (**Loss resulting both from existing injury and from injury received after commencement of this Act**) of Part 6, insert:

(2) However, any amount of compensation paid under section 16 of the former Act for the part of the loss resulting from the injury received before that commencement is to be deducted from the amount of compensation payable in accordance with this Part and this Schedule. 20

(3) Subclause (2) is enacted to avoid doubt and, accordingly, is taken to have applied from the commencement of Division 4 of Part 3 of this Act. However, subclause (2) does not affect any court proceedings determined or commenced before the date of assent to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993. 25
30

(d) After clause 6 of Part 6, insert:

Interpretation of “Table of Disabilities”

7. (1) The amendments to Division 4 of Part 3 of this Act made by Schedule 2 (3)–(5) to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993 are made for the purpose of avoiding doubt, and accordingly that Division is taken to have been so amended from the commencement of this Act. 35

Workers Compensation Legislation (Miscellaneous Amendments) 1993

**SCHEDULE 2—OTHER AMENDMENTS TO WORKERS
COMPENSATION ACT 1987—*continued***

- 5 (2) However, the amendment made by Schedule 2 (5) (d) to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993 does not affect:
- (a) any award of compensation made before the date of assent to that Act; or
- (b) any compensation that a worker has received or agreed to receive before that date; or
- 10 (c) any award of, or compromise or settlement of a claim for, damages made before that date; or
- (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150 of this Act) before that date.

15 **Explanatory note—Schedule 2 (18)**

Schedule 2 (18) (a)–(c) clarifies the application of certain transitional provisions contained in Part 6 of Schedule 6 and which concern compensation for non-economic loss and the Table of Disabilities.

- 20 Schedule 2 (18) (d) is consequential on the amendments made by Schedule 2 (3)–(5).

(19) Schedule 6, Part 20 (**Savings and transitional regulations**):

At the end of clause 1 (1) of Part 20, insert:

the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993.

25 **Explanatory note—Schedule 2 (19)**

The amendment authorises savings and transitional regulations to be made as a consequence of the enactment of this Act.

**SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO
WORKERS' COMPENSATION (DUST DISEASES) ACT 1942**

30

(Sec. 4)

(1) Section 3 (**Definitions**):

- 35 (a) In the definition of "Worker", after "applies", insert " , but does include a worker in or about a Broken Hill mine who is disabled or dies as a result of a dust disease to which the scheme of compensation set out in the Schedule to the Workmen's Compensation (Broken Hill) Act 1920 does not apply".

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO
WORKERS' COMPENSATION (DUST DISEASES) ACT 1942—
continued

(b) At the end of section 3, insert:

(2) The amendment to the definition of "worker" made by Schedule 3 (1) (a) to the Workers Compensation Legislation (Miscellaneous Amendments) Act 1993 applies whether the dust disease arose before or after the date of assent to that Act. 5

Explanatory note—Schedule 3 (1) 10

Schedule 3 (1) widens the definition of "worker" so that the Workers' Compensation (Dust Diseases) Act 1942 will cover Broken Hill mine workers (who would ordinarily be compensated under the Workmen's Compensation (Broken Hill) Act 1920) who are disabled or die as a result of contracting mesothelioma (i.e. cancer caused by asbestos) or other dust disease in circumstances where the worker would not be covered by the Broken Hill Act. At present, if a Broken Hill mine worker contracts mesothelioma (a disease which may affect the lungs but which is not necessarily a disease of the lungs), the worker (or his or her dependents) might not be able to recover compensation under the Broken Hill Act. The amendments to section 3 will ensure that such a worker (or dependents) would be covered under the Dust Diseases Act. 15
20

(2) Section 5AA:

After section 5, insert:

Delegation by board

5AA. 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. 25

Explanatory note—Schedule 3 (2)

The amendment will enable the Workers' Compensation (Dust Diseases) Board to delegate its functions under the Act to public servants.

(3) Section 6 (**Constitution of Fund**): 30

After section 6 (2) (d), insert:

(d1) the costs involved in reimbursing workers under section 9A;

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO
WORKERS' COMPENSATION (DUST DISEASES) ACT 1942—
continued

Explanatory note—Schedule 3 (3)

5 The amendment will enable the Board to pay out of the Fund constituted under the Act the costs involved in reimbursing workers under proposed section 9A (to be inserted by **Schedule 3 (6)**).

(4) Section 7 (**Medical authority**):

10 From section 7 (1), omit “in such form”, insert instead “in writing”.

Explanatory note—Schedule 3 (4)

The amendment provides that nominations for appointments to the medical authority under the Act are to be in writing instead of being required to be in a prescribed form.

(5) Section 8F (**Prescribed information to be posted up**):

15 Omit the section.

Explanatory note—Schedule 3 (5)

20 Section 8F presently requires prescribed information about certain matters (e.g. information as to employment in dust occupations) to be posted up at certain workplaces and makes it an offence not to comply with the requirement. No such information is prescribed however, and the provision is no longer of practical utility.

(6) Section 9A:

After section 9, insert:

Reimbursement of workers for travelling expenses associated with medical examinations

25 9A. (1) A worker who is required under this Act to submit himself or herself for a medical examination is entitled to be reimbursed by the board for:

- 30 (a) the amount of any wages lost by the worker by reason of submitting himself or herself for examination; and
(b) the costs of any fares, travelling expenses and maintenance necessarily and reasonably incurred in submitting himself or herself for examination.

(2) The regulations may make provision for or with respect to payments to workers by the board under this section.

Workers Compensation Legislation (Miscellaneous Amendments) 1993

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO
WORKERS' COMPENSATION (DUST DISEASES) ACT 1942—
continued

Explanatory note—Schedule 3 (6)

The amendment entitles workers to be reimbursed for the amount of any wages lost as a result of having to attend medical examinations under the Act and for the costs of associated fares and travelling expenses.

5

