



TASMANIA

**WORKERS COMPENSATION LEGISLATION AMENDMENT ACT
1993**

No. 44 of 1993

TABLE OF PROVISIONS**PART 1****PRELIMINARY**

1. Short title
2. Commencement

PART 2**AMENDMENTS OF WORKERS (OCCUPATIONAL DISEASES) RELIEF FUND ACT 1954**

3. Principal Act
4. Sections 3 and 4 substituted
 - 3—Interpretation
 - 4—Application of Act to certain mining employees
5. Sections 5 to 15 repealed and section 14 substituted
 - 14—Certifying medical officers and medical referees
6. Sections 16 to 19 and 25A repealed
7. Section 31 amended (Medical examination of employees claiming or in receipt of pension)
8. Section 33 amended (Expenses in connection with medical examinations and appeals)
9. Sections 34 and 35 repealed
10. Section 36 amended (Information and evidence)
11. Sections 40, 41 and 42 repealed and section 43 substituted
 - 43—Appeal from decisions of Secretary

12. Section 46 amended (Offences and penalties)
13. Part VI inserted
 - PART VI—SAVINGS AND TRANSITIONAL PROVISIONS
 - 49—Power of Secretary to wind up administration of this Act
 - 50—Saving for contracts, &c., of the Board
 - 51—Outstanding claims for compensation
 - 52—Transfer of assets, &c., of Board
 - 53—Administration of research fund by University of Tasmania
14. References to the Board amended
15. Formal amendments to Principal Act

PART 3

SUPPLEMENTAL PROVISIONS

16. Principal Act
17. Dissolution of Workers' (Occupational Diseases) Relief Fund Board
18. Regulations

PART 4

AMENDMENTS OF WORKERS COMPENSATION ACT 1988

19. Principal Act
20. Section 3 amended (Interpretation)
21. Section 20 amended (Functions of Commissioner)
22. Section 25 amended (Liability of employers to compensate workers for injuries)
23. Section 25A inserted
 - 25A—Claims for certain diseases arising from mining operations
24. Section 32 amended (Notice of injury and claim for compensation)
25. Section 38 amended (Effect of failure to make claim)

PART 5

ADMINISTRATION

26. Administration of Act

SCHEDULE 1

AMENDMENT OF REFERENCES IN WORKERS (OCCUPATIONAL DISEASES) RELIEF FUND ACT 1954 TO THE BOARD

SCHEDULE 2

FORMAL AMENDMENTS TO WORKERS (OCCUPATIONAL DISEASE) RELIEF FUND ACT 1954



**WORKERS COMPENSATION LEGISLATION
AMENDMENT ACT 1993**

No. 44 of 1993

**AN ACT to amend the *Workers (Occupational Diseases) Relief
Fund Act 1954* and the *Workers Compensation Act 1988***

[Royal Assent 10 September 1993]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Workers Compensation
Legislation Amendment Act 1993*.

Commencement

2—This Act commences on a day to be proclaimed.

PART 2**AMENDMENTS OF WORKERS (OCCUPATIONAL DISEASES) RELIEF
FUND ACT 1954****Principal Act**

3—In this Part, the *Workers (Occupational Diseases) Relief Fund Act 1954** is referred to as the Principal Act.

Sections 3 and 4 substituted

4—Sections 3 and 4 of the Principal Act are repealed and the following sections are substituted:—

Interpretation

3—(1) In this Act, unless the contrary intention appears—

“**basic rate**” means a sum equal to the basic salary for the purposes of Division 1 of Part VI of the *Workers Compensation Act 1988*;

“**Board**” means the Workers’ (Occupational Diseases) Relief Fund Board, as continued under this Act immediately before the commencement date;

“**certifying medical officer**” means a person appointed as a certifying medical officer under section 14;

“**commencement date**” means the date of commencement of the *Workers Compensation Legislation Amendment Act 1993*;

* No. 45 of 1954. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), vol. 6, p. 805. Subsequently amended by No. 40 of 1960, No. 45 of 1962, Nos. 16 and 55 of 1965, No. 28 of 1967, No. 106 of 1973, No. 22 of 1982, No. 29 of 1984, No. 20 of 1986, No. 38 of 1988 and Nos. 26, 43 and 46 of 1991.

- “**court**” includes a tribunal or authority which is empowered by, or under, law to determine any matter judicially;
- “**dependants**” means such members of the family of an employee as were dependent, wholly or partly, upon the earnings of the employee at the time of his or her death or would have been so dependent but for the incapacity of the employee due to disease, and includes a person whom the Secretary considers to be, or to have been, actually dependent upon the earnings of an employee;
- “**disease**” means a disease specified in the Second Schedule;
- “**employee**” means a person to whom this Act applies as provided by section 4;
- “**employer**” means a person with whom an employee has entered into a contract of employment or apprenticeship and includes the personal representative of a deceased employer;
- “**functions**” includes duties;
- “**legal proceedings**” includes an arbitration;
- “**medical referee**” means a person appointed as a medical referee under section 14;
- “**member of the family**”, in relation to an employee, means the wife, husband, father, step-father, grandfather, mother, step-mother, grandmother, son, step-son, grandson, daughter, step-daughter, granddaughter, brother, half-brother, sister or half-sister of the employee;
- “**mineral**” does not include coal or shale;
- “**mining operations**” means—
- (a) the disturbing, removing, carting, carrying, sifting, smelting, refining, crushing or otherwise dealing with or treating any rock, stone, quartz, clay, sand, soil, ore or mineral by any method for the purpose of obtaining metals or minerals or for prospecting for metals or minerals; and

- (b) any process in connection with the dealing with, treating or handling of, any rock, stone, quartz, clay, sand, soil, ore or mineral for that purpose; and
- (c) the dealing with, treating or handling, in connection with a process mentioned in paragraph (a) or (b), of any by-products or residues produced by, or arising from, that process; and
- (d) the cutting, dressing, shaping or working on any stone, granite, marble or other similar substance; and
- (e) the quarrying of blue metal or freestone; and
- (f) the driving of a tunnel—

but does not include sluicing, dredging or any similar operations or mining for coal or shale, or the quarrying or crushing of any materials required for the construction or maintenance of roads;

“obligations” includes duties and liabilities;

“property” means any legal or equitable estate or interest, whether present or future and whether vested or contingent, or real or personal property of any description, and includes entitlements, powers and privileges;

“regulations” means regulations made and in force under this Act;

“Secretary” means the Secretary of the Department;

“Workers’ Fund” means the Workers’ (Occupational Diseases) Relief Fund as continued under this Act immediately before the commencement date.

(2) References in this Act to the average weekly earnings of an employee before his or her incapacity or death are to be construed as references to his or her average weekly earnings as determined in accordance with the Fourth Schedule.

Application of Act to certain mining employees

4—This Act applies only—

- (a) to a person who immediately before the commencement date was an eligible employee within the meaning of this Act as then in force; and
- (b) in respect of a disease for which compensation had at that time been paid or approved under this Act.

Sections 5 to 15 repealed and section 14 substituted

5—Sections 5 to 15 (both inclusive) of the Principal Act are repealed and the following section is substituted:—

Certifying medical officers and medical referees

14—(1) The Secretary may appoint as many legally-qualified medical practitioners as the Secretary thinks necessary to be certifying medical officers or medical referees for the purposes of this Act.

(2) A certifying medical officer or medical referee holding office under this Act immediately before the commencement date is taken to have been appointed under this section.

(3) The Secretary must pay to—

- (a) a certifying medical officer; or
- (b) a medical referee—

such fee as the Minister may approve in respect of each examination made, certificate given or work or service performed for the purposes of this Act.

(4) A payment under subsection (3) is to be paid from the Consolidated Fund without further appropriation than this section.

Sections 16 to 19 and 25A repealed

6—Sections 16 to 19 (both inclusive) and 25A of the Principal Act are repealed.

Section 31 amended (Medical examination of employees claiming or in receipt of pension)

7—Section 31 (3) of the Principal Act is amended by omitting “Workers Fund” and substituting “Consolidated Fund without further appropriation than this section”.

Section 33 amended (Expenses in connection with medical examinations and appeals)

8—Section 33 (4) of the Principal Act is amended by omitting “Workers Fund” and substituting “Consolidated Fund without further appropriation than this section”.

Sections 34 and 35 repealed

9—Sections 34 and 35 of the Principal Act are repealed.

Section 36 amended (Information and evidence)

10—Section 36 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) For the purposes of this Act, the Secretary may, by notice in writing to a person, require that person—

(a) to furnish the Secretary with such information as he or she may require and as may be specified in the notice; or

(b) to attend and give evidence before the Secretary; or

(c) to produce all books, documents and other papers that are in the custody or under the control of that person.

Sections 40, 41 and 42 repealed and section 43 substituted

11—Sections 40 to 43 (both inclusive) of the Principal Act are repealed and the following section is substituted:—

Appeal from decisions of Secretary

43—(1) An employee who is aggrieved by a determination, order, ruling, direction or decision made or given by the Secretary may appeal to a Workers Compensation Commissioner appointed and holding office under Division 2 of Part II of the *Workers Compensation Act 1988* who must hear and determine the appeal.

(2) For the purposes of subsection (1)—

- (a) the application of the *Workers Compensation Act 1988* extends to the hearing of the appeal as if the employee were an applicant as defined in that Act; and
- (b) the appeal is to be instituted by an application in the prescribed form referred to in Part V of that Act and filed with a Registrar or a Deputy Registrar of a court of requests.

Section 46 amended (Offences and penalties)

12—Section 46 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) A person must not—

- (a) fail to furnish any information or perform any duty as and when required by or under this Act or fail to comply with any lawful requirement of the Secretary under this Act; or
- (b) without just cause, fail to attend and give evidence before the Secretary when so required pursuant to section 36; or
- (c) fail to answer fully and truthfully any question that is put to him or her when attending before the Secretary or to produce any book, document or paper that he or she is required pursuant to that section to produce; or
- (d) give to the Secretary any information, whether verbally or in writing, that is false or misleading in a material particular; or

- (e) in the case of an employee, fail to comply with any provision of this Act requiring him or her to present himself or herself for a medical examination or to undergo any test or treatment.

Penalty: Fine of not less than 5 penalty units and not more than 10 penalty units.

Part VI inserted

13—After section 48 of the Principal Act, the following Part is inserted:—

PART VI

SAVINGS AND TRANSITIONAL PROVISIONS

Power of Secretary to wind up administration of this Act

49—The Secretary may, for the purpose of winding up the administration of this Act by the Board before the commencement date, enter into such contracts, agreements and arrangements as he or she thinks fit for the sale or other disposal of all or any of the Board's property to any person.

Saving for contracts, &c., of the Board

50—All contracts, agreements, arrangements and undertakings which were entered into by the Board before, but which were not performed or discharged by, the commencement date are, except in relation to an obligation which was required to be performed before that day, discharged.

Outstanding claims for compensation

51—On and from the commencement date all claims for compensation under this Act that would have been payable from the Workers' Fund before that date are to be paid from the Consolidated Fund without further appropriation than this section.

Transfer of assets, &c., of Board

52—(1) On and from the commencement date—

- (a) such part of the Workers' Fund as consists of contributions made by the Treasurer is repayable to the Crown; and

- (b) the balance of the Workers' Fund is payable to the University of Tasmania to be held on the trusts specified in section 53; and
- (c) all other property that, immediately before that date, was vested in or belonged to the Board vests in and belongs to the Crown and all responsibility for the management and control of that property vests in the Crown; and
- (d) all money, debts and claims, liquidated or unliquidated, that, immediately before that date, were payable to, due to or recoverable by, the Board are taken to be money, debts or claims payable to, due to or recoverable by, the Crown; and
- (e) all money, debts and claims, liquidated or unliquidated, that immediately before that date were payable by, due from or recoverable against the Board are taken to be money, debts or claims payable by, due from or recoverable against, the Crown; and
- (f) the Crown may enforce and realize any security existing immediately before that date in favour of the Board and exercise any powers conferred on the Board pursuant to that security as if the security were a security in favour of the Crown; and
- (g) all legal proceedings pending immediately before that date which were instituted by or against the Board are taken to be legal proceedings pending on that date which were instituted by or against the Crown, as the case may be; and
- (h) legal proceedings which could have been instituted by the Board to enforce an obligation that was required to be performed, or a right that has accrued, before that date may be instituted by the Crown; and
- (i) legal proceedings which could have been instituted by a person against the Board to enforce an obligation that was required to be performed, or a right that had accrued, before that date may be instituted by that person against the Crown; and

- (j) any judgment or order of a court obtained by the Board and not executed or satisfied before that date is taken to be a judgment or order in favour of the Crown; and
- (k) any judgment or order of a court obtained by a person against the Board and not executed or satisfied before that date is taken to be a judgment or order against the Crown; and
- (l) any document which was addressed to, and which purported to have been served on or notified to, the Board and which, whether under this Act or otherwise, had not ceased to have effect before that date is taken to have been served on, or notified to, the Crown; and
- (m) any document which was addressed to, and which purported to have been served on or notified to, a person by or on behalf of the Board and which, whether under this Act or otherwise, had not ceased to have effect before that date is taken to have been served on, or notified to, that person by the Crown.

(2) The rights, obligations and exceptions conferred on, imposed on or applicable to, the Crown under Part VI of the *Supreme Court Civil Procedure Act 1932* apply to and in respect of legal proceedings and claims referred to in subsection (1), notwithstanding that those rights, obligations and exceptions or any of them were not conferred or imposed on, or applicable to, the Board in respect of legal proceedings or claims concerning the Board before the commencement date.

(3) Where property which becomes vested in the Crown by virtue of subsection (1) (a) or (c) consists of money, that money, except in so far as the regulations otherwise provide, is to be paid into the Consolidated Fund.

Administration of research fund by University of Tasmania

53—(1) The principal and interest of the money paid to the University of Tasmania under section 52 (1) (b) is to be available for the encouragement of medical research into the causes, treatment and prevention of any disease, injury or medical condition which may occur in, or arise from, mining operations and also into rehabilitation after any such disease, injury or condition.

(2) In the administration of the trusts arising under this section by the University of Tasmania—

- (a) grants for research are not to be made except after consultation with organizations representing the interests of the employers and employees engaged in mining operations; and
- (b) the University may reimburse itself for any expense reasonably incurred for the purposes of those trusts.

(3) In the selection of research projects for the purpose of making a grant, preference is to be given—

- (a) in the first instance, to projects to be conducted in Tasmania or projects likely to benefit research into the health of mining employees in Tasmania; and
- (b) secondly, to projects to be conducted in Australia.

(4) In the exercise of its powers under this section, the University of Tasmania must endeavour to ensure that as far as practicable the principal and interest of the money paid to it under section 52 (1) (b) is applied during a period of 2 years commencing on the commencement date.

References to the Board amended

14—Each of the provisions of the Principal Act that are specified in column 1 of Schedule 1 are amended by omitting “Board” as specified in column 2 of that Schedule and substituting “Secretary”.

Formal amendments to Principal Act

15—The Principal Act is further amended as specified in Schedule 2.

PART 3**SUPPLEMENTAL PROVISIONS****Principal Act**

16—In this Part, the *Workers' (Occupational Diseases) Relief Fund Act 1954* is referred to as the Principal Act.

Dissolution of Workers' (Occupational Diseases) Relief Fund Board

17—(1) The Board, as constituted under the Principal Act immediately before the commencement of this Act, is dissolved.

(2) The appointments of the chairman and the other members of the Board (including a deputy member appointed under section 9 (1) of the Principal Act as in force immediately before that commencement) are cancelled.

Regulations

18—The Governor may make regulations providing for matters of a savings or transitional nature consequent on the winding up of the administration of the Principal Act by the Board or on the dissolution of the Board under this Act.

PART 4**AMENDMENTS OF WORKERS COMPENSATION ACT 1988****Principal Act**

19—In this Part, the *Workers Compensation Act 1988** is referred to as the Principal Act.

* No. 4 of 1988. Amended by No. 39 of 1988, No. 5 of 1990, No. 26 of 1991, No. 50 of 1992 and Nos. 27 and 43 of 1993.

Section 3 amended (Interpretation)

20—Section 3 (1) of the Principal Act is amended by inserting after the definition of “member of the family” the following definitions:—

“**mining employee**” means a worker who is engaged in mining operations under a contract of service or apprenticeship with an employer, whether the contract is express or implied or is oral or in writing;

“**mining operations**” means—

- (a) the disturbing, removing, carting, carrying, sifting, smelting, refining, crushing or otherwise dealing with or treating any rock, stone, quartz, clay, sand, soil, ore or mineral by any method for the purpose of obtaining metals or minerals or for prospecting for metals or minerals; and
- (b) any process in connection with the dealing with, treating or handling of, any rock, stone, quartz, clay, sand, soil, ore or mineral for that purpose; and
- (c) the dealing with, treating or handling, in connection with a process mentioned in paragraph (a) or (b), of any by-products or residues produced by, or arising from, that process; and
- (d) the cutting, dressing, shaping or working on any stone, granite, marble or other similar substance; and
- (e) the quarrying of blue metal or freestone; and
- (f) the driving of a tunnel—

but does not include sluicing, dredging or any similar operations or mining for coal or shale, or the quarrying or crushing of any materials required for the construction or maintenance of roads;

Section 20 amended (Functions of Commissioner)

21—Section 20 of the Principal Act is amended as follows:—

(a) by omitting “Act.” from paragraph (c) and substituting “Act;”;

(b) by inserting after paragraph (c) the following paragraph:—

(d) to hear and determine any appeal referred to the Commissioner under the *Workers (Occupational Diseases) Relief Fund Act 1954*.

Section 25 amended (Liability of employers to compensate workers for injuries)

22—Section 25 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:—

(8) No compensation is payable to a worker under this Part in respect of any disease for which he or she is entitled to compensation as an employee under the *Workers (Occupational Diseases) Relief Fund Act 1954*.

Section 25A inserted

23—After section 25 of the Principal Act, the following section is inserted:—

Claims for certain diseases arising from mining operations

25A—(1) Subject to section 25 (2), where—

(a) a mining employee is suffering from silicosis, carbon-monoxide poisoning, pneumoconiosis, cadmium poisoning, fibrosis of the lungs, ankylostomiasis, lead poisoning and its results, nystagmus, arsenic poisoning or contact dermatitis caused by work; and

- (b) he or she has been engaged continuously in mining operations in Tasmania for a period of 2 years immediately before ceasing to be employed as a mining employee and is incapacitated from continuing to work as such—

the disease is, in the absence of evidence to the contrary, to be taken to have arisen out of and in the course of his or her employment and that employment is taken to have contributed to a substantial degree to that disease.

(2) For the purposes of subsection (1), a mining employee is taken to have been engaged continuously in mining operations in this State for the period mentioned in that subsection, notwithstanding that he or she may, at any time after that period commenced, have been absent from his or her employment for any periods not exceeding 3 months in the aggregate.

Section 32 amended (Notice of injury and claim for compensation)

24—Section 32 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

(2A) For the purposes of this Part, where a mining employee—

- (a) suffers from silicosis, pneumoconiosis or fibrosis of the lungs within 12 months after ceasing to be a mining employee; or
- (b) suffers from silicosis within 5 years after ceasing to be a mining employee, and since ceasing to be engaged in mining operations he or she has not engaged in any occupation in which he or she would be exposed to contamination by industrial dust; or
- (c) suffers from lead poisoning or cadmium poisoning within 3 months after ceasing to be a mining employee; or

- (d) suffers from lead poisoning within 6 months after ceasing to be a mining employee, and since ceasing to be engaged in mining operations he or she has not exposed himself or herself to contamination by lead in any form; or
- (e) suffers from dermatitis caused by work within 2 months after ceasing to be a mining employee—
a claim for compensation is to be made no later than 6 months after the relevant period specified in this subsection or, where the disease results in the death of the mining employee, within 6 months after the date of the death.

Section 38 amended (Effect of failure to make claim)

25—Section 38 of the Principal Act is amended by inserting “or (2A)” after “(b)”, wherever occurring in subsections (1) and (3).

PART 5

ADMINISTRATION

Administration of Act

26—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for State Development and Resources; and
 - (b) the Department responsible to the Minister for State Development and Resources in relation to the administration of this Act is the Department of State Development and Resources.
-

SCHEDULE 1

Section 14

AMENDMENT OF REFERENCES IN WORKERS (OCCUPATIONAL
DISEASES) RELIEF FUND ACT 1954 TO THE BOARD

Provision amended by omitting "Board" and substituting "Secretary"	Number of times word omitted occurs in provision
Section 22 (1)	1
Section 22 (6)	1
Section 22 (8)	1
Section 22 (9)	1
Section 22 (10)	1
Section 23 (1)	2
Section 23 (2)	1
Section 23 (5)	1
Section 24 (1)	1
Section 24 (4)	2
Section 24 (5)	1
Section 25 (1)	2
Section 25 (2)	1
Section 25 (3)	2
Section 25AA (3) (b)	1
Section 25AA (4)	2
Section 31 (1)	1
Section 31 (3)	1
Section 32 (2)	1
Section 33 (1)	2
Section 44 (1)	2
Section 44 (2)	1
Section 46 (2)	1
Section 46 (5)	2
Section 48 (2) (ab)	1
Section 48 (2) (ac)	2

SCHEDULE 2

Section 15

FORMAL AMENDMENTS TO WORKERS (OCCUPATIONAL DISEASES)
RELIEF FUND ACT 1954

Provision amended	Manner amended
Section 20 (2) and (4)	Omit "secretary", substitute "Secretary".
Section 21	Omit "eligible".
Section 22 (1)	Omit "eligible".
Section 23 (1)	Omit "eligible".
Section 24 (1)	Omit "eligible".
Section 25 (1)	Omit "eligible".
Section 25 (2)	Omit "eligible".
Section 36 (3)	Omit "Board" and "Board or an officer of the Board authorized under paragraph (b) of subsection (1) of this section", substitute "Secretary" in each case.
Section 36 (4)	Omit "Board or an officer of the Board", substitute "Secretary".
Section 37	Omit "Board, or an officer of the Board who is authorized by it in that behalf", substitute "Secretary".
Section 44 (1)	Omit "its" and "it" (lastly occurring), substitute "his or her" and "he or she", respectively.

[Second reading presentation speech made in:—
House of Assembly on 16 June 1993
Legislative Council on 18 August 1993]