

1992—No. 43

WORKERS COMPENSATION ACT 1987—REGULATION

(Relating to increased funeral benefits and payments of damages)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Workers Compensation Act 1987, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY
Minister for Industrial Relations,
Minister for Further Education,
Training and Employment.

Commencement

1. This Regulation commences on 1 February 1992.

Amendment of Workers Compensation (General) Regulation 1987

2. The Workers Compensation (General) Regulation 1987 is amended:
(a) by omitting clause 6A and by inserting instead the following clause:

Section 27 (b): maximum amount for funeral expenses

6A. (1) For the purposes of section 27 (b) of the Act, the maximum amount for which an employer is liable in respect of reasonable funeral expenses, if death results from an injury and the worker leaves no dependants, is:

- (a) in the case of a funeral held before 1 February 1992—\$2,700; or
- (b) in any other case—\$4,000.

(2) This clause applies regardless of when the injury which caused the death of the worker concerned was received.

(b) by inserting after Part 14 the following Part:

PART 15—MISCELLANEOUS

Structured settlement not to apply

47. Section 151Q (3) of the Act does not apply if (but for the award of damages) a plaintiff would be eligible under section 15 (1) of the former Act (as continued by clause 6 of Part 4 of Schedule 6 to the Act) to receive a lump sum by way of redemption of a liability in respect of weekly payments of workers compensation.

EXPLANATORY NOTE

The object of this Regulation is to amend the Workers Compensation (General) Regulation 1987 so as:

- (a) to increase (from \$2,700 to \$4,000) the maximum amount for which an employer is liable in respect of funeral expenses in certain cases; and
- (b) to provide that section 151Q (3) of the Act does not apply in certain circumstances, as explained below.

Liability for weekly payments of workers compensation could be redeemed under section 15 of the Workers' Compensation Act 1926 by payment of a lump sum (with the consent of the worker concerned). That section is continued under the Workers Compensation Act 1987 in respect of liabilities arising from injuries received before 30 June 1987 (the date of commencement of the provisions of the Act relating to weekly payments of compensation).

However, if a person recovers damages in relation to an injury from the employer liable to pay workers compensation in respect of the injury, the person's entitlement to the compensation is extinguished. Accordingly, the person can no longer receive a lump sum by way of redemption of the employer's liability to pay compensation.

Section 151Q (3) provides that, where a person is to be awarded damages for the deprivation or impairment of earning capacity and the loss of weekly earning capacity at the date of the award exceeds the statutory weekly payments of workers compensation, arrangements for payment of those damages must provide for the periodic payment (at intervals not exceeding 12 months) of at least the statutory weekly payments of workers compensation.

The exclusion of the application of that section in the case of a person who would have been eligible to receive a lump sum by way of redemption (had the person not been awarded damages) removes the requirement for periodic payment of the damages concerned (and, consequently, allows payment of those damages by a lump sum instead).
