

1994—No. 378

WORKERS COMPENSATION ACT 1987—REGULATION

(Relating to weekly payments, conciliation of disputes, and consequential matters)

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.

KERRY CHIKAROVSKI
Minister for Industrial Relations and Employment.

Commencement

1. This Regulation commences on 1 September 1994.

Amendment of Workers Compensation (General) Regulation 1987

2. The Workers Compensation (General) Regulation 1987 is amended:

- (a) by omitting from clause 8 (2) the matter “4.8” and by inserting instead the matter “5”;
- (b) by omitting from the heading to Part 4 the words “—PARTIAL INCAPACITY”;
- (c) by omitting from clause 10 (1) the matter “section 38 (10) (b)” and by inserting instead the matter “section 38A (2) (b)”;
- (d) by omitting clause 10AA and by inserting instead the following clauses:

Notice of requirement to obtain suitable employment from other person

10AA. (1) A notice under section 38A (3) of the Act:

- (a) may be based on the model form (if any) set out in the claims procedures referred to in section 38A (3) (d) of the Act; and

- (b) may include additional information and explanatory matter to assist in the understanding of the notice; and
- (c) may be varied or replaced by a further notice given to the worker in accordance with section 38A (3).

(2) Reminder copies of a notice under section 38A (3) of the Act may be given to the worker concerned from time to time.

(3) A notice given to a worker in accordance with section 38A (3) of the Act is sufficient notice for any further period of unemployment in respect of the same injury.

(4) In the case of any worker:

- (a) who, before the commencement of Schedule 1 to the Workers Compensation Legislation (Amendment) Act 1994, was at the same time both partially incapacitated for work as the result of an injury and unemployed; and
- (b) who is, as at or at any time after that commencement, both partially incapacitated for work as the result of that injury and unemployed,

the requirement under section 38A (2) (d) of the Act applies regardless of whether the worker has been notified in accordance with section 38A (3) of the Act.

Notice of intention to discontinue or reduce weekly payments

10AB.(1) For the purposes of section 54 (4) (b) of the Act, the notice referred to in section 54 must contain the following information:

- (a) a statement to the effect that, if the worker thinks that the weekly payments of compensation should not be discontinued or reduced as intended, the worker can refer the dispute for conciliation by a conciliation officer;
- (b) a statement to the effect that the worker may also seek advice or assistance from the worker's trade union organisation or from a lawyer;
- (c) such other information as the Authority may from time to time approve and notify to insurers and self-insurers.

(2) If the notice referred to in section 54 of the Act relates to a reduction in the amount of weekly payments of compensation resulting from the failure (in the opinion of the insurer or self-insurer concerned) by the worker to seek suitable employment as required by section 38 of the Act, the notice must include a statement of the reason for the intended reduction.

(3) If:

- (a) the notice referred to in section 54 of the Act relates to a reduction in the amount of weekly payments of compensation as a result of the application of section 40 of the Act; and
- (b) the worker is not in receipt of earnings (or the compensation is otherwise calculated on the basis of the worker's ability to earn after the injury, rather than on the worker's actual earnings after the injury),

the notice must also include a statement of the reason for the intended reduction and how the compensation (to be so reduced) has been calculated.

(e) by inserting before Part 7 the following Part:

PART 6A—CONCILIATION OF DISPUTES

Referring of disputes arising under section 40 (4)

18. As soon as practicable after any dispute arises about the operation of section 40 (4) of the Act, the insurer or self-insurer concerned must refer the dispute for conciliation under Division 2 of Part 4 of the Act.

Disputes relating to commencement of payments for weekly compensation

18A. A statement referred to in section 102 (4) (b) of the Act as to the matters in a dispute under that section must be in such form (if any) as the Authority may from time to time approve.

Referring of disputes generally

18B. (1) A dispute that is referred for conciliation under Division 2 of Part 4 of the Act must:

- (a) be in writing; and
- (b) be in such form (if any) as the Authority may from time to time approve; and
- (c) be accompanied by such information and documents as may be specified in that form.

(2) However, a dispute (other than a dispute about the operation of section 40 (4) of the Act) may, with the consent of the Senior Conciliation Officer, be referred by any party to the dispute by the making of an oral request for conciliation.

(3) A party to a dispute may, orally or in writing as directed by the relevant conciliation officer, refer any further matter relating to the dispute for conciliation.

Proceedings before conciliation officers

18C. (1) Without limiting the functions that may be exercised by conciliation officers under Divisions 2 and 3 of Part 4 of the Act, and subject to any general directions by the Senior Conciliation Officer, a conciliation officer may exercise the following functions in connection with a dispute:

- (a) conduct a conciliation conference by telephone;
- (b) refer any relevant question for report by a rehabilitation counsellor (within the meaning of section 154 of the Act);
- (c) if the conciliation officer brings the parties to an agreement, assist (at the request of the parties) in the drafting of written terms of settlement;
- (d) make a recommendation that the employer or insurer concerned should pay all or part of the costs reasonably incurred by the worker in connection with the claim or with the conciliation proceedings;
- (e) give general advice to a party about any relevant entitlements, obligations and procedures under the Act or any other law;
- (f) inform a worker who is a party about other possible sources of advice or assistance (such as from unions and lawyers).

(2) In the case of a dispute as to the liability to make or continue to make weekly payments of compensation, the conciliation officer may, subject to any general directions by the Senior Conciliation Officer, prepare a report to the Authority recommending that the approval referred to in section 51 (1) (c) of the Act be given. The conciliation officer may do so only if the parties agree to such a recommendation and the officer is satisfied that the worker concerned has received independent legal advice.

(3) A conciliation officer must return any document supplied by a party if requested to do so by the party. The conciliation officer should also, if it is appropriate in the interests of confidentiality and if requested to do so by the party concerned, refrain from copying any such document or from making any written notes concerning the existence of any such document.

Form of recommendations, directions and notifications by conciliation officers

18D. (1) A recommendation, direction or notification made or given by a conciliation officer under Divisions 2 and 3 of Part 4 of the Act may be made or given orally or in writing.

(2) Any such recommendation, direction or notification that is made or given orally is, as soon as practicable, to be confirmed in writing.

(3) A notification under section 104 (3) of the Act may include advice and information of the kind referred to in clause 18C (1) (e) and (f).

(4) If any direction given by a conciliation officer is given subject to a condition (as specified in the direction) that involves some action by the worker, the conciliation officer is to ensure that the worker is informed accordingly.

Arrangements and reports by Senior Conciliation Officer

18E. (1) Without affecting the operation of section 97 (2) of the Act, the Senior Conciliation Officer may re-assign a dispute to another conciliation officer. The Senior Conciliation Officer may do so, for example, because the conciliation officer to whom the dispute has been assigned is unavailable.

(2) The Senior Conciliation Officer may refer to the Authority:

- (a) a report, based on information obtained from the conciliation of disputes, relating to claims administration by insurers and self-insurers; and
- (b) a report on any suspected fraud or contravention of the Act or the regulations by a party to a dispute; and
- (c) a report on any suspected neglect in the provision of rehabilitation to an injured worker; and
- (d) such other matter relating to a dispute that the Senior Conciliation Officer considers appropriate.

(f) by omitting Part 8;

(g) by omitting from clause 24 the words “The mount defined as premium income in section 217 of the Act in relation to the contribution payable by an insurer for a financial year” and by inserting instead the words “For the purposes of the contribution payable by an insurer under section 220 of the Act for a financial year, premium income (as defined in section 3 (1) of the Act)”;

(h) by omitting from item 6 of the Table to clause 25 the words “and any subsequent financial year”;

(i) by inserting at the end of the Table to clause 25 the following item:

7. Financial year commencing 1 July 1994 and any subsequent financial year:

- (a) in the case of a specialised insurer 4 per cent
- (b) in the case of an insurer other than a specialised insurer 7 per cent
- (j) by omitting from the heading to Part 10 the words “STATE COMPENSATION BOARD” and by inserting instead the words “WORKCOVER AUTHORITY”;
- (k) by omitting from clause 28 the words “The amount defined as premium income in section 258 of the Act in relation to the contribution payable by an insurer” and by inserting instead the words “For the purposes of the contribution payable by an insurer under section 261 of the Act for a financial year, premium income (as defined in section 3 (1) of the Act)”;
- (l) by omitting from clause 32 the words “The amount defined as premium income in section 193 of the Act in relation to the contributions payable by an insurer into the Fund for a financial year” and by inserting instead the words “For the purposes of the contributions payable by an insurer into the Fund for a financial year, premium income (as defined in section 3 (1) of the Act)”;
- (m) by omitting clause 46;
- (n) by inserting after clause 47 the following clauses:

Amendment relating to 18 month limit for common law claims—transitional provision

48. The amendment to section 151D (1) of the Act made by Schedule 5 (7) to the Workers Compensation Legislation (Amendment) Act 1994 extends to proceedings in respect of injuries received before the commencement of the amendment (including proceedings pending at that commencement).

Uninsured Liability and Indemnity Scheme—modification of provisions of the Act

49. (1) For the purposes of section 148 (3) of the Act, the following modifications are made to the provisions of the Act in their application to claims made under the Scheme:

- (a) references in sections 40A, 83, 84, 93C, 129, 131 and 133 to an insurer, self-insurer or employer are to be read as references to the Authority;
- (b) references in sections 38A, 134 and 154A to an insurer or self-insurer are to be read as references to the Authority.
- (o) by omitting from Form 3 in Schedule 1 the words “a Review Officer” wherever occurring and by inserting instead the words “a Conciliation Officer of the WorkCover Authority”;

- (p) by omitting from Form 3 in Schedule 1 the words “the Review Officer” wherever occurring and by inserting instead the words “the Conciliation Officer”;
- (q) by omitting from Form 3 in Schedule 1 the words “clerk to the Workers Compensation Commissioners” and by inserting instead the words “Senior Conciliation Officer of the WorkCover Authority”;
- (r) by omitting from the last paragraph of Form 3 in Schedule 1 the heading “Review Officers” and by inserting the heading “WorkCover Conciliation Officers”.

Amendment of Workers Compensation (General Rehabilitation Programmes) Regulation 1988

3. The Workers Compensation (General Rehabilitation Programmes) Regulation 1988 is amended:

- (a) by omitting from clause 1 the words “(General Rehabilitation Programmes)” and by inserting instead the words “(Workplace Rehabilitation Programs)”;
- (b) by omitting from clause 3 the definition of “general rehabilitation programme” and by inserting instead in alphabetical order the following definition:

“workplace rehabilitation program” means a program established under section 152 of the Act with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of an employer.

- (c) by omitting from the definition of “standards for rehabilitation providers” in clause 3 and from clause 14 (2) (d) the word “Secretary” wherever occurring and by inserting instead the word “Director-General”;
- (d) by omitting the heading to Part 2 and by inserting instead the following heading:

PART 2—WORKPLACE REHABILITATION PROGRAMS

- (e) by omitting from clauses 4, 5, 5A (2), 6, 7 (l), 8, 9, 9A, 10 and 11 the words “general rehabilitation programme” wherever occurring and by inserting instead the words “workplace rehabilitation program”;
- (f) by omitting from clause 5A (1) the words “general rehabilitation programmes” and by inserting instead the words “workplace rehabilitation programs”;

- (g) by omitting from clause 5A (3) the words “standard programme” and by inserting instead the words “standard workplace rehabilitation program”;
- (h) by omitting from clause 6 (2) the words “a programme” and by inserting instead the words “a workplace rehabilitation program”;
- (i) by omitting from clauses 6 (1), 7 (1), 8 and 9A the words “the programme” wherever occurring and by inserting instead the words “the program”.

EXPLANATORY NOTE

The principal purpose of this Regulation is to make appropriate provisions for the purpose of commencing amendments to the Workers Compensation Act 1987 made by the Workers Compensation Legislation (Amendment) Act 1994. In particular, this Regulation:

- prescribes certain matters relating to the notification under section 38A of the Act of the worker’s requirement to seek suitable employment in order to receive payment of weekly compensation (e.g. the notice may be based on a model form set out in the claims procedures notified by the WorkCover Authority to insurers)
- prescribes the information to be contained in the notice under section 54 of the Act which is required before termination or reduction of payment of weekly compensation
- makes further provision for the referral of disputes for conciliation under the Act, and prescribes additional functions that may be exercised by conciliation officers
- makes other consequential amendments to the Workers Compensation (General) Regulation 1987 and the Workers Compensation (General Rehabilitation Programmes) Regulation 1988.

This Regulation is made under the Workers Compensation Act 1987, including section 280 (the general regulation-making power), sections 38A, 54, 100C, 148 and 152, and clause 1 of Part 20 of Schedule 6.
