



New South Wales

Workers Compensation (General) Amendment (Conciliation) Regulation 1997

under the

Workers Compensation Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

JEFFREY SHAW, Q.C., M.L.C.,
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to amend the *Workers Compensation (General) Regulation 1995* under the *Workers Compensation Act 1987* to make amendments that are consequential on the enactment of the *WorkCover Legislation Amendment Act 1996* with respect to the conciliation of disputes about payment of workers compensation.

The amendments reflect new arrangements for the conciliation of disputes involving new claims under which the responsibility for referring a dispute for conciliation will shift to the worker (because court proceedings on a claim will not be able to be commenced until the dispute has been to conciliation). Conciliation of new claims will be by conciliation officers from the Department of Industrial Relations (with existing claims continuing to be dealt with by conciliation officers from the Workcover Authority) and the functions of the Senior Conciliation Officer will be exercised by a Principal Conciliator.

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Explanatory note

Other amendments:

- (a) repeal provisions made redundant by the amending Act, and
- (b) make further provision for the manner in which disputes may be referred for conciliation, and
- (c) provide for the approval of forms to be used for various purposes under the Act in connection with the conciliation of disputes, and
- (d) prescribe classes of persons who may as agents represent parties to disputes in respect of new claims, and
- (e) provide for the circumstances in which a conciliation officer must call for the production of documents and information relevant to a dispute about a workers compensation claim and for the circumstances in which any such documents or information may be provided to a party to the dispute, and
- (f) fix the maximum costs payable to a legal practitioner for various legal services provided in connection with the conciliation of a dispute, and
- (g) limit the operation of an exception to provisions regulating how often an injured worker can be required to undergo a medical examination, so as to provide that the exception (which applies to examinations made for the purposes of determining a lump sum compensation claim) applies only for 12 weeks after the claim is made or during an adjournment of court proceedings on the claim, and
- (h) provide that a conciliation officer can make a recommendation about the basis on which it would be reasonable for the parties to a dispute to reach agreement.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 54, 94A, 98A, 100A, 100C 117 and 280 (the general regulation making power).

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1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Conciliation) Regulation 1997*.

2 Amendment of Workers Compensation (General) Regulation 1995

The *Workers Compensation (General) Regulation 1995* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 2)

[1] Clause 3A

Insert after clause 3:

3A Notes

Notes included in this Regulation are explanatory notes and do not form part of this Regulation.

[2] Clause 15 Notice of intention to discontinue or reduce weekly payments

Omit clause 15 (1)-(3). Insert instead:

- (1) The notice referred to in section 54 of the Act must:
 - (a) include a statement of the reason for the dispute concerned together with a statement of the particulars that support that reason, and
 - (b) be accompanied by a form of request for referral for conciliation together with a duplicate copy of the notice, and
 - (c) include a statement to the effect that if the worker wishes to refer the matter for conciliation, he or she may do so by sending to the appropriate officer a completed form of request for referral for conciliation together with any other documents required by the form of request to accompany the request, and
 - (d) nominate (in the statement under paragraph (c)) which of the Senior Conciliation Officer or the Principal Conciliator is the appropriate officer to whom the request and other documents should be sent (nominated on the basis of a determination by the person who gives the notice as to whether the claim concerned is a new claim or an existing claim), and

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- (e) include the address and fax number for the Senior Conciliation Officer or the Principal Conciliator (whichever officer is nominated in the statement under paragraph (c)).

[3] Clause 15 (4)

Omit “the reason for the intended reduction and”.

[4] Clause 40A

Insert after clause 40:

40A Notice of dispute to include information about how to refer dispute for conciliation

The notice given to a claimant under section 94A of the Act must:

- (a) include a statement of the particulars that support the reason for the dispute, and
- (b) be accompanied by a form of request for referral for conciliation together with a duplicate copy of the notice, and
- (c) include a statement to the effect that if the worker wishes to refer the matter for conciliation, he or she may do so by sending to the appropriate officer a completed form of request for referral for conciliation together with any other documents required by the form of request to accompany the request, and
- (d) nominate (in the statement under paragraph (c)) which of the Senior Conciliation Officer or the Principal Conciliator is the appropriate officer to whom the request and other documents should be sent (nominated on the basis of a determination by the person who gives the notice as to whether the claim concerned is a new claim or an existing claim), and

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- (e) include the address and fax number for the Senior Conciliation Officer or the Principal Conciliator (whichever officer is nominated in the statement under paragraph (c)).

Note. Section 94A of the Act also requires the notice to include a statement of the reason the insurer disputes liability.

[5] Clause 43 Medical examination of worker at direction of employer

Insert “for 12 weeks after the claim is duly made or during an adjournment of court proceedings in respect of the claim under section 106E (3) or 106FC (5) of the Act” after “the Act” in clause 43 (4).

[6] Clause 44A

Insert before clause 45:

44A Forms for new claims to be approved by Principal Conciliator

In the application of this Part in respect of a new claim, a reference to a form approved by the Authority is to be read as a reference to a form approved by the Principal Conciliator.

[7] Clause 45 Referring of disputes arising under section 40 (4)

Omit the clause.

[8] Clause 47 Referring of disputes generally

Omit clause 47 (1) and (2). Insert instead:

- (1) A dispute is to be referred for conciliation under Division 2 of Part 4 of the Act by means of a written request for referral for conciliation, which is:
 - (a) to be in such form (if any) as the Authority (in the case of disputes in respect of existing claims) or the Principal Conciliator (in the case of disputes in respect of new claims) may from time to time approve, and

- (b) to be accompanied by such information and documents as may be specified in that form.

Note. For disputes involving new claims (that is, claims first made on or after 1 March 1997), the Principal Conciliator has all the functions of the Senior Conciliation Officer in place of the latter. Accordingly, references in clauses 47–51 to the Senior Conciliation Officer should be read, in the case of disputes involving new claims, as references to the Principal Conciliator.

- (2) A dispute is not considered to have been referred for conciliation in accordance with subclause (1) unless and until all the information and documents required to accompany the written request for referral have been provided.

[9] Clause 47 (3)

Omit “(other than a dispute about the operation of section 40 (4) of the Act)”.

[10] Clause 48 Proceedings before conciliation officers

Omit clause 48 (1) (a), (d) and (e). Insert instead:

- (d) make a recommendation about the basis upon which it would be reasonable for the parties to reach agreement and resolve the dispute,

[11] Clause 49 Form of recommendations, directions and notifications by conciliation officers

Insert after clause 49 (4):

- (5) A direction under section 98A (Power of conciliation officer to require information) of the Act, a summons under section 98B (Summons to appear at conciliation conference) of the Act, a certificate under section 98D (Certificates as to conciliation of disputes) of the Act and a standard form of agreement under section 98F (Agreements arising from conciliation) of the Act are to be in such form (if any) as the Authority (in the case of disputes in respect of existing claims) or the Principal Conciliator (in the case of disputes in respect of new claims) may from time to time approve.

[12] Clause 51A–51C

Insert after clause 51:

51A Production etc of documents

- (1) If a party to a dispute so requests, the conciliation officer must (subject to section 98A (2) of the Act) give a direction to another party to the dispute to produce or furnish to the conciliation officer documents or information specified by the party making the request (being documents or information considered by the conciliation officer to be relevant to the dispute),
- (2) A conciliation officer may produce or furnish to a party to a dispute any documents or information that the conciliation officer has received (under section 98A of the Act or otherwise) from any party to the dispute if the party to whom they are to be produced or furnished has requested the conciliation officer to do so or the conciliation officer thinks it appropriate to do so (whether or not a request to do so has been made).
- (3) A conciliation officer can request any party to a dispute to exchange information and documents with any other party to the dispute, being information or documents that the party the subject of the request considers may be helpful to its case, whether or not the information or documents have been or are to be furnished or produced to the conciliation officer under section 98A of the Act.
- (4) This clause does not limit the power of a conciliation officer to require the production or furnishing of documents or information not requested by a party to a dispute.

51B Maximum costs for legal practitioners at conciliation conferences

- (1) Pursuant to section 117 (1) (a) of the Act, the maximum amount payable to a barrister or solicitor as costs for the following legal services is as follows:

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- (a) assistance with any pre-conciliation telephone discussion and preparation and lodgment of a request for conciliation (including any appropriate attachments)—\$200.
 - (b) preparation for, attendance at and participation at a conciliation conference, for each hour or part of any hour—\$200.
 - (c) assistance in the preparation and execution of terms of agreement in a case where resolution of the dispute is achieved—\$75 (with no amount being payable in respect of assistance in the preparation and execution of terms of agreement in a case where resolution of the dispute is not achieved).
- (2) Pursuant to section 117 (1) (b) of the Act, the maximum amount payable to a barrister or solicitor as costs for a matter that is not a legal service but that is related to any of the matters referred to in subclause (1) is as fixed in respect of the matter under section 196 of the Legal Profession Act 1987.
 - (3) The limits imposed by subclause (1) on the costs payable to a solicitor or barrister do not apply to any amount payable as disbursements (but this subclause does not limit the operation of section 196 of the *Legal Profession Act 1987* with respect to disbursements).
 - (4) Costs are payable in respect of the appearance of one legal representative only for a party appearing at a conciliation conference (whether the representative is a barrister or solicitor) and no costs are payable for any additional legal representative (whether a barrister or solicitor) who appears for the party at the conciliation conference on the same occasion.

51C Agents

For the purposes of section 100A (2A) of the Act, the classes of agent who may represent parties to disputes in respect of new claims are:

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- (a) officers of industrial organisations of employers or industrial organisations of employees registered under the *Industrial Relations Act 1996*,
- (b) officers of associations of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth,
- (c) officers of the Labor Council of New South Wales,
- (d) persons who are employed by licensed insurers (or former licensed insurers) or self-insurers, or by firms of solicitors or by any of the bodies referred to in paragraphs (a)-(c).