



New South Wales

Workers Compensation Amendment (1996 Amendments) 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*.

J. W. SHAW MLC
Minister for Industrial Relations

Explanatory note

This Regulation amends the *Workers Compensation (General) Regulation 1995* as follows:

- (a) An existing provision that imposes controls on how often an injured worker can be required by the worker's employer to undergo a medical examination is amended to provide that a medical examination of a worker for the purposes of the determination of a claim for lump sum compensation is not subject to the usual controls. This will allow claims for lump sum compensation to be assessed and decided quickly. For example, if a worker has been receiving weekly payments of compensation for at least 6 months, the existing controls only allow medical examinations at intervals of 2 months. If the worker then makes a lump sum claim, the amendment will allow the employer to have the worker examined to assess that claim without waiting for the 2 month interval to elapse.
- (b) A new provision is inserted to, firstly, specify cases in which notice is not required to be given to an injured worker of intention to discontinue weekly payments of compensation under new section 52A of the Act (which provides for the discontinuation of weekly payments

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after the first 104 weeks of incapacity if the worker is fit for suitable duties and does not meet certain criteria related to return-to-work efforts) and, secondly, specify that the Compensation Court has jurisdiction to determine disputes about those cases. Under the provisions of the Act, discontinuation of payments under section 52A can generally only occur if the worker has been given notice (a payment discontinuation notice) 12 weeks before the time when the worker's payments or entitlements would total 104 weeks and the worker can only apply to the Compensation Court to determine a dispute in that regard if the application is made within that 12 week period of notice. The cases in which, under the new provision in the regulations, section 52A can apply (if the worker is in the category mentioned) without a payment discontinuation notice and the worker can apply to the Court at other times, are those where the worker first makes his or her claim after the 104 week period has passed or where the worker's claim is disputed before the earliest time at which the Act normally allows such a notice to be given. However, the regulations will still allow workers compensation insurers in those cases to give the worker information similar to that contained in payment discontinuation notices.

- (c) The list of maximum penalties for offences when dealt with by penalty notice is amended to increase from \$200 to \$500 the maximum penalty for offences concerned with a failure to keep the required register of workplace injuries under section 90 of the Act.

This Regulation arises from amendments made by the *WorkCover Legislation Amendment Act 1996*.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 52A, 52B, 129, 278A and 280 (the general regulation making power).

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (1996 Amendments) Regulation 1997*.

2 Commencement

This Regulation commences on 12 January 1997.

3 Amendment of Workers Compensation (General) Regulation 1995

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

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

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

Insert at the end of clause 43:

(4) Subclauses (2) and (3) do not apply to any examination by a medical practitioner made for the purposes of the determination of a claim for compensation under section 66 or 67 of the Act.

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Schedule 1 Amendments

[2] Clause 79

Insert after clause 78:

79 Application of sections 52A and 52B to cases of late claims and early disputes

- (1) If a claim for weekly payments of compensation is first made by a worker after the earliest time at which a payment discontinuation notice could have been given to the worker under section 52A of the Act:
 - (a) section 52A of the Act applies without any such notice being given, and
 - (b) the worker may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given).
- (2) If proceedings involving a claim for weekly payments of compensation in respect of any period of incapacity for work that includes any period beyond the first 104 weeks of incapacity referred to in section 52A (1) of the Act are before the Compensation Court and relate to a dispute that arose before the earliest time at which a payment discontinuation notice could have been given to the worker under section 52A of the Act:
 - (a) section 52A of the Act applies without any such notice being given, and
 - (b) the worker may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given).
- (3) This clause does not prevent the person on whom the claim has been made from giving the worker a notice informing the worker about the existence and effect of section 52A of the Act and alerting the worker to the

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Amendments

Schedule 1

application, or possible application, of that section to the worker. The giving of such a notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

[3] Schedule 5 Penalty Notice Offences

Omit “200” from Column 3 wherever occurring opposite the matter relating to section 90 (5).

Insert instead “500”.