



New South Wales

Workers Compensation (General) Amendment (Savings and Transitional) Regulation 1998

under the

**Workers Compensation Act 1987 and Workplace Injury
Management and Workers Compensation Act 1998**

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

JEFFREY SHAW. Q.C.. M.L.C.,

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to make amendments to the *Workers Compensation (General) Regulation 1995* that are consequential on the commencement on 1 August 1998 of most of the provisions of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) and the *Workers Compensation Legislation Amendment Act 1998* which amends the *Workers Compensation Act 1987* (the 1987 Act).

The amendments made by Schedule 1 [1], [2], [3] and [6]-[16] to the Regulation are minor consequential amendments relating to such matters as changed or additional cross-references or the removal of obsolete provisions.

Schedule 1 [4] inserts a new provision that will require employers to pay workers compensation conciliation costs incurred by workers, with limits on the amounts payable based on current limits on amounts payable to legal practitioners and agents for conciliation costs.

1998 No 437

Workers Compensation (General) Amendment (Savings and Transitional) Regulation 1998

Explanatory note

Schedule 1 [6] inserts a new Part that contains the following transitional provisions:

- (a) proposed clause 73H provides for the application of Chapter 4 (Workers compensation) of the 1998 Act to injuries received before the commencement of the provisions,
- (b) proposed clause 73I provides for the continuation in respect of pending matters of provisions of the 1987 Act that prevent the commencement of court proceedings until a dispute has been conciliated,
- (c) proposed clause 73J extends the period within which the initial risk premium calculation methodology (under new insurance arrangements to begin on 1 October 1999) has to be submitted to the WorkCover Authority by the Rating Bureau.
- (d) proposed clause 73K provides for the phasing in of changes to the limitation period on the making of workers compensation claims,
- (e) proposed clause 73L provides for the continuation of the existing Occupational Health, Safety and Rehabilitation Council pending the appointment of members of the new Occupational Health and Safety Council,
- (f) proposed clause 73M provides for the continuation of provisions of the 1987 Act that deal with the contributions by insurers and self-insurers under that Act to the WorkCover Authority Fund.
- (g) proposed clause 73N provides for the phasing-in of amendments to section 38 of the 1987 Act that reduce from 104 weeks to 52 weeks the maximum total period of compensation under that section (which requires partially incapacitated workers who are seeking but unable to obtain suitable employment to be compensated as if totally incapacitated).
- (h) proposed clause 73O makes it clear that an amendment to the provision of the 1987 Act that deals with elections for damages or compensation applies to awards of compensation by the Compensation Court whether the awards are by award, interim award or order.

This Regulation is made under the 1987 Act, including section 248 (the general regulation-making power) and Part 20 (Savings and transitional regulations) of Schedule 6, and the 1998 Act, including sections 88 and 248 (the general regulation making power).

Workers Compensation (General) Amendment (Savings and Transitional) Regulation 1998

1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Savings and Transitional) Regulation 1998*.

2 Commencement

This Regulation commences on 1 August 1998.

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 2)

[1] Clause 3 Definitions

Omit the definition of *the Act*. Insert instead:

the Act or the 1987 Act means the *Workers Compensation Act 1987*.

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

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

Insert “or section 102 (6) of the 1998 Act” after “106FC (5) of the Act” in clause 43 (4).

[3] Clause 48 Proceedings before conciliation officers

Omit clause 48 (2).

[4] Clause 51D

Insert after clause 51C:

51 D Employer to pay conciliation costs

- (1) The employer is to pay the conciliation costs incurred by a worker in conciliating a dispute under Division 3 of Part 2 of Chapter 4 of the 1998 Act unless the Principal Conciliator otherwise directs under this clause.
- (2) In a particular case, the Principal Conciliator may, on the recommendation of the conciliator in the case, direct that the whole or some specified amount or proportion of the conciliation costs that would otherwise be payable by the employer under subclause (1) are not so payable. Any such direction does not affect the power of the Compensation Court under section 112 (Costs) of the 1998 Act.

-
- (3) Amounts payable under this clause are subject to the following limits:
 - (a) in respect of costs to which clause 51B applies, the limits imposed on those costs by that clause,
 - (b) in respect of disbursements for which a regulation under the *Legal Profession Act 1987* fixes a maximum amount, any maximum so fixed.
 - (4) Pursuant to clause 1 (6) of Part 20 of Schedule 6 to the 1987 Act, section 88 of the 1998 Act is deemed to be amended by the inclusion of the following subsection:
 - (3) A reference in this section to costs for legal services, or costs of services, includes a reference to disbursements in relation to those services.
 - (5) Subclause (4) ceases to have effect on 31 December 1999.

[5] Part 19C

Insert after Part 19B:

Part 19C Savings and transitional provisions

73H Application of Chapter 4 of 1998 Act

Chapter 4 (Workers compensation) of the 1998 Act extends to an injury received before the commencement of that Part, subject to this Part.

73I Restrictions on commencing court proceedings

- (1) Division 5 (Restrictions on commencing court proceedings) of Part 2 of Chapter 4 of the 1998 Act does not apply to the commencement of court proceedings in respect of compensation if:
 - (a) a dispute about that compensation was referred for conciliation under Division 2 of Part 4 of the 1987 Act before the commencement of this clause, or
 - (b) court proceedings in respect of that compensation were validly commenced under the 1987 Act before the commencement of this clause.

- (2) The provisions of Divisions 3A and 3B of Part 4 of the 1987 Act continue to apply (as if they had not been repealed) to and in respect of the commencement of the court proceedings referred to in those provisions except court proceedings in respect of which Division 5 of Part 2 of Chapter 4 of the 1998 Act applies. The application of Division 3A of Part 4 of the 1987 Act is subject to clause 44AA,
- (3) Pursuant to clause 1 (6) of Part 20 of Schedule 6 to the 1987 Act, section 101 (5) (c) of the 1998 Act is deemed to be amended by omitting the words “commencement of this Act” and by inserting instead the words “commencement of the 1987 Act”. This subclause ceases to have effect on 31 December 1999.

73J Submission of methodology for calculating risk premium

The reference in section 159 (Approval of methodology for calculating risk premium) of the 1998 Act to 31 March is, in the case of the year 1999, to be read as a reference to 30 June.

73K Time for making claim

Section 65 (13) of the 1998 Act applies in respect of an injury, or death resulting from an injury, received before the commencement of that subsection (but not before 4 pm on 30 June 1987), as if paragraphs (a) and (b) of that subsection read as follows:

- (a) the claim is made within whichever of the following periods ends later:
 - (i) the period of 3 years commencing when the injury or accident happened or, in the case of death, on the date of death,
 - (ii) the period of 1 year that commences when this section commences,
- (b) the claim is not made within that period but the claim is in respect of an injury resulting in the death or serious and permanent disablement of a worker.

73L Continuation of OHS Council

- (1) The Occupational Health, Safety and Rehabilitation Council of New South Wales as constituted under the *WorkCover Administration Act 1989* immediately before the commencement of this clause continues and is taken to be the OHS Council under the 1998 Act until the appointment of the members of that Council under section 9 of the 1998 Act.
- (2) This clause ceases to operate on 1 April 1999 (so as to require the appointment of members of the OHS Council before that date).
- (3) This clause applies despite clause 6 (Abolition of former bodies) of Part 18A of Schedule 6 to the 1987 Act.

73M Contributions to WorkCover Authority Fund

Part 9 (WorkCover Authority Fund) of the 1987 Act continues to apply (despite its repeal) to and in respect of financial years up to and including the financial year commencing on 1 July 1999.

73N Reduction of maximum section 38 benefits period

- (1) The amendments made to section 38 of the 1987 Act by the *Workers Compensation Legislation Amendment Act 1998* do not apply to a worker in respect of any period of incapacity after the commencement of those amendments that results from an injury before that commencement if the worker was in receipt of compensation in accordance with that section before that commencement for any period of incapacity resulting from that injury.
- (2) Clause 5D (2) of Part 4 of Schedule 6 to the 1987 Act is subject to this clause.

73O Election of damages or compensation

- (1) Pursuant to clause 1 (6) of Part 20 of Schedule 6 to the 1987 Act:
 - (a) section 151A (3) (b) of the 1987 Act is deemed to be amended by omitting the words "or by the Compensation Court making an award in respect of that permanent loss compensation" and by inserting instead the words "or by the Compensation Court awarding that permanent loss compensation (whether by award, interim award or order)". and
 - (b) clause 11 of Part 14 of Schedule 6 to the 1987 Act is deemed to be amended by inserting after the word "awards" wherever occurring the words "of compensation".
- (2) This clause ceases to have effect on 31 December 1999.

[6] Schedule 5 Penalty notice offences

Omit "90 (5)" wherever occurring. Insert instead "63 (5)".

[7] Schedule 5

Omit "90 (1)" wherever occurring. Insert instead "63 (1)".

[8] Schedule 5

Omit "93 (1) (a)". Insert instead "69 (1) (a)".

[9] Schedule 5

Omit "93 (1) (b)". Insert instead "69 (1) (b)".

[10] Schedule 5

Omit "93 (1) (c)". Insert instead "69 (1) (c)".

[11] Schedule 5

Omit "134(2)". Insert instead "126(2)".

[12] Schedule 5

Omit the matter relating to section 154 (5).

[13] Schedule 5

Omit “269 (3)” wherever occurring. Insert instead “231(3)”.

[14] Schedule 5

Omit “sec 269” wherever occurring. Insert instead “sec 231”.

[15] Schedule 5

Omit “270 (2) (a)” wherever occurring. Insert instead “232 (a)”.

[16] Schedule 5

Omit “270 (2) (b)” wherever occurring. Insert instead “232 (b)”.