



New South Wales

Workers Compensation (Workplace Rehabilitation Programs) Amendment Regulation 1998

under the

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

His Excellency the Lieutenant-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*.

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Attorney General

Explanatory note

The objects of this Regulation are:

- (a) to specify, in respect, of self-insurers, various modifications to the new workplace injury management provisions of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act).
- (b) to make minor amendments to the *Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995* that are consequential on the commencement on 1 September 1998 of the injury management provisions of the 1998 Act and of the *Workers Compensation Legislation Amendment Act 1998* which amends the *Workers Compensation Act 1987* (the 1987 Act).

An example of the modifications referred to in paragraph (a) is a modification that requires certain references to "insurer" in the context of workplace injury management obligations to be read as a reference to the

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Insurance Ministerial Corporation when the reference applies to Government employers covered by the Government's managed fund scheme. This modification is made to recognise the Insurance Ministerial Corporation's role in workplace injury management, even though Government employers are not insured by the Insurance Ministerial Corporation.

This Regulation is made under the 1987 Act, including section 239 and Part 20 (Savings and transitional regulations) of Schedule 6, and the 1998 Act, including sections 52, 59 and 248.

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1 Name of Regulation

This Regulation is the *Workers Compensation (Workplace Rehabilitation Programs) Amendment Regulation 1998*.

2 Commencement

This Regulation commences on 1 September 1998.

3 Amendment of Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995

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

4 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 3)

[1] Clause 1

Omit the clause. Insert instead:

1 Name of Regulation

This Regulation is the *Workers Compensation (Workplace Injury Management) Regulation 1995*.

[2] Clause 3 Definitions

Omit "under the *WorkCover Administration Act 1989*" from the definitions of *Authority* and *Council* wherever occurring.

Insert instead "under the 1998 Act".

[3] Clause 3

Omit "section 152 (2) (a) of the Act" from the definition of *guidelines*.

Insert instead "section 52 (2) (a) of the 1998 Act".

[4] Clause 3

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

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

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

[5] Clause3

Omit the definition of *workplace rehabilitation program*.

Insert instead in alphabetical order:

return-to-work program means a return-to-work program established under section 52 of the 1998 Act with respect to policies and procedures (consistent with the injury management plan of the employer's insurer) for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

[6] Part 1A

Insert after Part 1:

Part 1A Modification of provisions applying to

3A Interpretation

- (1) When one or more subsidiaries of the holder of a licence as a self-insurer under the 1987 Act or the 1998 Act is endorsed on the licence, each of those endorsed subsidiaries and the licence holder are *group self-insurers* for the purposes of this Part.
- (2) The holder of a licence as a group self-insurer may for the purposes of this Part, by notice in writing to the Authority from time to time, designate any one or more of the group self-insurers covered by the licence as *designated insurer* for some or all of the group self-insurers. The licence holder can designate itself as a designated insurer.
- (3) Except where otherwise expressly provided, this Part provides for the modification of provisions of Chapter 3 of the 1998 Act in their application to the following self-insurers:
 - (a) a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme.
 - (b) a group self-insurer for whom there is a designated insurer.

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3B References to "insurer"

- (1) Sections 43, 44, 45, 47, 52 and 57 are to be read as if:
 - (a) a reference to *insurer* were, in the case of a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme, a reference to the Insurance Ministerial Corporation, and
 - (b) a reference to *insurer* were, in the case of a self-insurer for whom there is a designated insurer, a reference to that designated insurer, and
 - (c) the Insurance Ministerial Corporation were the insurer of each employer who is a Government employer covered for the time being by the Government's managed fund scheme, and
 - (d) the designated insurer for a group self-insurer were the insurer of the group self-insurer.
- (2) A reference in sections 50 and 58 to *insurer* is to be read as including a reference:
 - (a) to the Insurance Ministerial Corporation, when the insurer is a Government employer covered for the time being by the Government's managed fund scheme, and
 - (b) when the insurer is a group self-insurer for whom there is a designated insurer, to that designated insurer.

3C Modification of exceptions for self-insurers

The following modifications are to be made:

- (a) section 43 (3)—omit "This subsection does not apply to a self-insurer".
- (b) section 43 (4)—omit "(except when the insurer is a self-insurer)".
- (c) section 43 (5)—omit "This subsection does not apply when the employer is a self-insurer".

- (d) omit section 44 (4),
- (e) section 45 (2)—omit “(except when the insurer is a self-insurer)”,
- (f) section 45 (5)—omit “This subsection does not apply when the insurer is a self-insurer.”,
- (g) omit section 46 (3).

3D Preparation of injury management plan

Section 45 (1) is replaced with the following subsection:

- (1) When it appears that a workplace injury is a significant injury, an injury management plan must be established for the injured worker by:
 - (a) the Insurance Ministerial Corporation, when the self-insurer who is or may be liable to pay compensation to the injured worker is a Government employer covered for the time being by the Government’s managed fund scheme. or
 - (b) when the insurer who is or may be liable to pay compensation to the injured worker is a group self-insurer for whom there is a designated insurer, that designated insurer.

3E Self-insurer’s licence

- (1) A reference in section 55 of the 1998 Act to *insurer’s licence* is, in the application of that section to a group self-insurer (whether or not a group self-insurer for whom there is a designated insurer), to be read as a reference to the licence as a self-insurer on which the group self-insurer is endorsed.
- (2) It is a condition of a licence as a self-insurer that the holder of the licence must ensure that any subsidiary of the holder endorsed on the licence complies with the subsidiary’s obligations under Chapter 3 of the 1998 Act.

[7] Part 2 Heading

Omit "WORKPLACE REHABILITATION PROGRAMS".
Insert instead "Return-to-work programs".

[8] Part 2

Omit "workplace rehabilitation program" wherever occurring.
Insert instead "return-to-work program".

[9] Clause 5 Offence—failure to establish program

Omit "section 152 of the Act".
Insert instead "section 52 of the 1998 Act".

[10] Clause 6 Standard return-to-work programs for category 2 employers

Omit "the Act" from clause 6 (2). Insert instead "the 1998 Act".

[11] Clause 6 (3)

Omit "section 92 (1) (b) of the Act".
Insert instead "section 65 (1) (b) of the 1998 Act".

[12] Clause 10 Offence—failure to display or notify program

Omit "section 152 (2) (c) of the Act".
Insert instead "section 52 (2) (c) of the 1998 Act".

[13] Clause 11B

Omit the clause. Insert instead:

11B Functions of rehabilitation co-ordinators

An employer's rehabilitation co-ordinator has such functions as may be specified in the guidelines.

[14] Part 2A Return-to-work plans

Omit the Part.

[15] Clause 25A Penalty notice offences

Omit "section 278A of the Act" from clause 25A (1).
Insert instead "section 246 of the 1998 Act".

[16] Clause 25A (1) (e) (i)

Omit "section 274 of the Act".
Insert instead "section 238 of the 1998 Act".

[17] Clause 27 Exemptions

Omit "workplace rehabilitation program under section 152 of the Act and from clauses 11A and 12".
Insert instead "return-to-work program under section 52 of the 1998 Act and from clause 11A".

[18] Clause 28

Insert after clause 27:

28 Savings and transitional provisions

- (1) A workplace rehabilitation program established under section 152 of the 1987 Act and in force immediately before the repeal of that section is taken to be a return-to-work program established under section 52 of the 1998 Act. However, any such program does not have effect to the extent that it is inconsistent with the injury management program of the employer's insurer.
- (2) Part 2A (Return to work plans) of this Regulation, as in force immediately before its repeal, continues to have effect in respect of injuries that happened before the commencement of Chapter 3 of the 1998 Act.

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- (3) If an injury management plan has been prepared in compliance with section 45 of the 1998 Act in respect of an injury to a worker that happened before the commencement of Chapter 3 of the 1998 Act (and has been so prepared within the time within which a return-to-work plan under Part 2A of this Regulation would have otherwise been required to be prepared):
 - (a) subclause (2) does not apply in respect of the injury, and
 - (b) despite section 41 (2) of the 1998 Act, sections 45 (7), 46, 47, 55, 56 and 57 of the 1998 Act apply in respect of the injury.
- (4) Despite section 41 (2) of the 1998 Act, a reference in section 52, 53 and 54 of the 1998 Act to an injured worker is to be read as including a reference to an injured worker when the injury happened before the commencement of Chapter 3 of the 1998 Act.

[19] Schedule 1 Penalty notice offences

Omit "rehabilitation program" wherever occurring.
Insert instead "return-to-work program".