



New South Wales

# Workers Compensation (General) Amendment (New Claims) Regulation 1998

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 *Workers Compensation Act 1987* provides for claims for workers compensation to be either *existing claims* or *new claims*. Different arrangements apply according to whether a claim is a new claim or an existing claim, particularly with respect to restrictions on the commencement of court proceedings and conciliation of disputes. Conciliation of disputes involving new claims is by the new Workers Compensation Resolution Service in the Department of Industrial Relations rather than by the WorkCover conciliation service.

The Act allows the definition of *new claim* to be modified by the regulations and the object of this Regulation is to modify the definition to provide that from 1 March 1998 all claims are new claims.

The Regulation contains transitional provisions that allow disputes referred for conciliation before 1 March 1998 to continue to be dealt with under the current arrangements for conciliation by the WorkCover conciliation service and for claims that are the subject of court proceedings commenced before that date to continue to be dealt with as existing claims.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 87D, 106FD and 280 (the general regulation making power).

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**Workers Compensation (General) Amendment  
(New Claims) Regulation 1998**

**1 Name of Regulation**

This Regulation is the *Workers Compensation (General) Amendment (New Claims) Regulation 1998*.

**2 Commencement**

This Regulation commences on 1 March 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.

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## Schedule 1 Amendments

(Clause 3)

### [ 1 ]    Clauses 44AA, 44AB

Insert in Part 13 before clause 44A:

#### **44AA Modification of definition of “existing claim”: section 87D**

- (1) Pursuant to section 87D (2) and (3) of the Act, the definition of *existing claim* in section 87D (1) of the Act is modified so that on and from 1 March 1998 no claims are existing claims.
- (2) The Act and this Regulation continue to apply in respect of a dispute referred for conciliation before 1 March 1998 (being a dispute in respect of a claim that was an existing claim immediately before that date), as if the claim to which the dispute relates were an existing claim.

**Note.** Because there can be more than one dispute on a claim, subclause (2) might not apply to all disputes on a claim. A dispute referred for conciliation before 1 March 1998 will be dealt with as if the claim were an existing claim, while another dispute on the same claim (but one not referred for conciliation before 1 March 1998) will be dealt with as if the claim were a new claim.

- (3) If court proceedings have been commenced in respect of a claim for compensation in accordance with Division 3A (Restrictions on commencement of court proceedings) of Part 4 of the Act before 1 March 1998 (being a claim that was an existing claim immediately before that date), the claim continues to be an existing claim for the purposes of the Act and this Regulation but only in respect of the compensation to which the proceedings relate and compensation of the same kind as the compensation to which the proceedings relate.

**Note.** Subclause (3) applies only to the compensation to which the court proceedings relate and compensation of the same kind as that compensation. If the claim includes a claim for other compensation, the claim will be a new claim to the extent that it

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relates to that other compensation. The result is that section 106E (3) of the Act will not apply to the amendment of proceedings to include a claim for the other compensation and section 106F of the Act will not apply to the commencement of court proceedings for the other compensation on or after 1 March 1998.

### **44AB New claims subject to s 106FD**

Pursuant to section 106FD (5) of the Act, all new claims for compensation under Division 3 or 5 of Part 3 of the Act are subject to section 106FD of the Act except claims that are the subject of court proceedings commenced before 1 March 1998 in respect of compensation of the kind to which section 106FD of the Act applies.

### **[2]      Clause 47 Referring of disputes generally**

Omit “(that is, claims first made on or after 1 March 1997)” from the note to the clause.