



New South Wales

Workers Compensation (General) Amendment (Savings) Regulation 1999

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, QC, MLC,

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to make a savings provision consequent on an amendment made to section 51 of the *Workers Compensation Act 1987*. Section 51 provides that an employer's liability to pay weekly compensation to an injured worker may be commuted by the employer by the payment of a lump sum, but only if the amount of the lump sum is determined by the Compensation Court and the worker consents. Section 51 continued the procedure under the former 1926 Act for the payment of a lump sum by way of redemption of the liability to pay weekly compensation.

Section 51 (9) of the 1987 Act was added in 1995 to make it clear that, once the employer makes the payment, the amount paid is compensation for the purposes of various sections of the 1987 Act (including contribution by other employers who are also liable for the injury). A consequential amendment made to section 51 (9) by the *Workers Compensation Legislation Amendment Act 1998* removed the references to particular sections of the 1987 Act and the former 1926 Act and replaced them with a general reference to the 1987 Act, the former 1926 Act and also the 1998 Act, but without altering the application of the provision to circumstances in which a payment has already been made by the employer.

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Explanatory note

The proposed Regulation ensures that the amendment made to section 51 (9) will not be construed as altering the long-established procedure with respect to the operation of section 51 (in accordance with relevant court decisions), namely, that an employer may pay an amount determined by the Compensation Court to commute or redeem a liability to pay weekly compensation if the worker consents, but that a worker is not entitled to payment of such a lump sum.

The consequential amendment made to section 51 (9) was not (having regard to the explanatory note and the Parliamentary debate on the legislation) intended to alter the operation of section 51 in that respect. During the second reading speech of the Minister who introduced the legislation it was stated that “Under both the current and proposed arrangements, commutations are available only where the insurer agrees and, in the overall scheme context, it is important not to permit development of an uncontrolled lump sum approach” (Hansard, Legislative Council, 26 June 1998).

The proposed Regulation is made to avoid any doubt about the operation of section 51 of the 1987 Act. To the extent (if any) that the proposed saving made by the Regulation is inconsistent with section 51 of the 1987 Act (as amended), Part 20 of Schedule 6 to the 1987 Act confers authority for the making of such a regulation on a temporary basis. Accordingly, the proposed Regulation will expire on 31 December 1999 and will provide the opportunity for legislation to be enacted to transfer the effect of the saving to the Act, if considered appropriate.

Workers Compensation (General) Amendment (Savings) Regulation 1999

1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Savings) Regulation 1999*.

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.

Schedule 1 Amendment

(Clause 2)

Insert after clause 73O:

73P Saving in connection with amendment to section 51 of the 1987 Act

- (1) In this clause, *the section 51 amendment* means the amendment made to section 51 (9) of the 1987 Act by the *Workers Compensation Legislation Amendment Act 1998*.
- (2) The section 51 amendment does not affect established procedure (in accordance with relevant decisions of courts of competent jurisdiction) with respect to the operation of section 51 of the 1987 Act, namely, that the commutation of a liability to pay weekly compensation by the payment of a lump sum determined by the Compensation Court is not a payment of compensation to which a worker is entitled but a payment that the employer may make with the consent of the worker in order to commute that liability.
- (3) This clause applies whether the liability that is to be commuted arose before or after the commencement of this clause.
- (4) Pursuant to Part 20 of Schedule 6 to the 1987 Act, section 51 of the 1987 Act is deemed to be amended to the extent (if any) as is necessary for the purposes of giving effect to this clause.
- (5) This clause expires on 31 December 1999.