



New South Wales

# Workers Compensation Amendment (Existing Claims) Regulation 2014

under the

Workers Compensation Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

DOMINIC PERROTTET, MP  
Minister for Finance and Services

## Explanatory note

The object of this Regulation is to make further transitional arrangements in respect of the application of certain amendments made by the *Workers Compensation Legislation Amendment Act 2012* to claims for workers compensation made before 1 October 2012.

This Regulation also extends the time within which a work capacity assessment of an existing recipient of weekly payments of compensation must be made under provisions introduced by the *Workers Compensation Legislation Amendment Act 2012*.

This Regulation is made under the *Workers Compensation Act 1987*, including Parts 19H and 20 of Schedule 6 and section 280 (the general regulation-making power).

## **Workers Compensation Amendment (Existing Claims) Regulation 2014**

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Workers Compensation Act 1987

### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment (Existing Claims) Regulation 2014*.

### **2 Commencement**

This Regulation commences on 3 September 2014 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Workers Compensation Regulation 2010**

### **[1]    Schedule 8 Savings and transitional provisions**

Omit “period of 18 months” from clause 17.

Insert instead “period of 35 months (expiring at the end of 31 August 2015)”.

### **[2]    Schedule 8, clause 17, note**

Omit “makes 18 months”. Insert instead “makes 35 months”.

### **[3]    Schedule 8**

Insert at the end of the Schedule:

## **Part 2      Special provisions for existing claims—2012 amendments**

### **25    Interpretation**

(1) In this Part:

*existing claim* means a claim for compensation in respect of an injury made before 1 October 2012.

(2) Words and expressions used in this Part have the same meaning as in Part 19H of Schedule 6 to the 1987 Act.

(3) The provisions of Part 19H of Schedule 6 to the 1987 Act and Part 1 of this Schedule are deemed to be amended to the extent necessary to give effect to this Part.

### **26    Operation of Part**

This Part takes effect on and from 1 October 2012.

### **27    Termination of weekly payments on retiring age**

The amendment made to section 52 of the 1987 Act by the 2012 amending Act does not apply in respect of an existing claim.

### **28    Medical and related expenses**

(1) An existing claim is exempt from the operation of section 59A (Limit on payment of compensation) of the 1987 Act in respect of the following compensation until the injured worker reaches retiring age:

- (a) compensation payable to an injured worker under Division 3 of Part 3 of the 1987 Act if the worker’s injury has resulted in permanent impairment of greater than 20%,
- (b) compensation payable in respect of the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries),
- (c) compensation payable in respect of the modification of a worker’s home or vehicle.

- (2) A worker's injury is considered to have resulted in permanent impairment of greater than 20% only if the injury has resulted in permanent impairment and:
  - (a) the degree of permanent impairment has been assessed for the purposes of Division 4 of Part 3 of the 1987 Act to be greater than 20%, or
  - (b) an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or  
**Note.** Paragraph (b) no longer applies once the degree of permanent impairment has been assessed.
  - (c) the insurer is satisfied that the degree of permanent impairment is likely to be greater than 20%.
- (3) In this clause:  
*retiring age* has the same meaning as in section 52 of the 1987 Act.

### 29 Secondary surgery

- (1) An existing claim is exempt from the operation of section 59A (Limit on payment of compensation) of the 1987 Act in respect of compensation for the cost of secondary surgery.
- (2) Surgery is *secondary surgery* if:
  - (a) the surgery is directly consequential on earlier surgery and affects a part of the body affected by the earlier surgery, and
  - (b) the surgery is approved by the insurer within 2 years after the earlier surgery was approved (or is approved later than that pursuant to the determination of a dispute that arose within that 2 years).
- (3) This clause does not affect the requirements of section 60 of the 1987 Act (including, for example, the requirement for the prior approval of the insurer for secondary surgery).  
**Note.** This clause only creates an exception from section 59A of the 1987 Act in respect of compensation for secondary surgery that would have been payable (had it not been for section 59A) as part of the original claim for compensation. It does not relate to surgery for an injury that gives rise to a separate claim for compensation.

### 30 Stay of work capacity decisions

- (1) A review under section 44 (Review of work capacity decisions) of the 1987 Act of a work capacity decision made in respect of an existing claim operates to stay the decision that is the subject of the review and prevents the taking of action by an insurer based on the decision while the decision is stayed.
- (2) This clause applies to an internal review under section 44 (1) (a) of the 1987 Act only if the application for internal review is made by the worker within 30 days after the worker receives notice from the insurer of the work capacity decision to be reviewed.
- (3) The stay under this clause operates from the time the application for review is made until the worker is notified of the findings of the review (or the application for review is withdrawn).
- (4) This clause applies despite section 44 (4) of the 1987 Act, which is deemed to be amended to the extent necessary to give effect to this clause.

**31 Time for work capacity assessment**

- (1) The amendment of clause 17 of this Schedule by the *Workers Compensation Amendment (Existing Claims) Regulation 2014* takes effect as from 31 March 2014.
- (2) A work capacity assessment conducted by an insurer under clause 8 of Part 19H of Schedule 6 to the 1987 Act that would have been validly conducted had the amendment referred to in subclause (1) been made before the work capacity assessment was conducted is taken to have been validly conducted.