

WORKERS COMPENSATION ACT 1987—REGULATION
(Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995)
NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Workers Compensation Act 1987, has been pleased to make the Regulation set forth hereunder.

JEFFREY SHAW, Q.C., M.L.C.,
Minister for Industrial Relations.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**accreditation**” means accreditation as a provider of rehabilitation services;

“**Authority**” means the WorkCover Authority constituted under the WorkCover Administration Act 1989;

“**Council**” means the Occupational Health, Safety and Rehabilitation Council constituted under the WorkCover Administration Act 1989;

“**large employer**” means an employer who employs more than 20 workers;

“small employer” means an employer who employs no more than 20 workers;

“standards for rehabilitation providers” means standards relating to the provision of rehabilitation services approved by the Authority;

“the Act” means the Workers Compensation Act 1987;

“workplace rehabilitation program” means a program established under section 152 of the Act with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of an employer.

PART 2—WORKPLACE REHABILITATION PROGRAMS

Time within which program to be established

4. (1) A workplace rehabilitation program required to be established by a large employer must be established before the expiration of the period of 12 months after becoming an employer.

(2) A workplace rehabilitation program required to be established by a small employer must be established before the expiration of the period of 12 months after becoming an employer.

(3) The Authority may, in a particular case, extend the period during which a workplace rehabilitation program is required to be established.

Offence—failure to establish program

5. An employer who fails to establish a workplace rehabilitation program under section 152 of the Act within the period required by this Regulation is guilty of an offence.

Maximum penalty: In the case of a small employer, 5 penalty units; in the case of a large employer, 20 penalty units.

Standard rehabilitation program for small employers

6. (1) The Authority may prepare (in accordance with the relevant guidelines in section 152 (2) (a) of the Act) standard workplace rehabilitation programs for small employers generally or for different kinds of small employers.

(2) A small employer who does not establish a separate workplace rehabilitation program in accordance with the Act may establish a workplace rehabilitation program by adopting a relevant standard workplace rehabilitation program prepared under this clause.

(3) The Authority may include in a Compensation claim form approved by the Authority under section 92 (1) (b) of the Act a copy of any standard workplace rehabilitation program prepared under this clause.

Program to comply with guidelines etc.

7. (1) An employer is not to be regarded as having established a workplace rehabilitation program unless the program complies with the guidelines under section 152 (2) (a) of the Act and any directions under or requirements of this Regulation.

(2) A small employer who adopts a relevant standard workplace rehabilitation program under clause 6 is to be regarded as having duly established a workplace rehabilitation program.

Guidelines for programs—directions

8. (1) The Authority may give an employer directions in writing in connection with any workplace rehabilitation program established, or to be established, by the employer to ensure that the program complies with the guidelines under section 152 (2) (a) of the Act.

(2) The Authority is to review a direction given by it under this clause if the employer concerned requests a review but need not review any particular direction more than once.

Nomination in programs of accredited providers of rehabilitation services

9. A workplace rehabilitation program must, if the guidelines under section 152 (2) (a) of the Act so require, nominate an accredited provider of rehabilitation services for the purposes of the program.

Offence—failure to display or notify program

10. An employer who fails to display or notify a workplace rehabilitation program in accordance with section 152 (2) (c) of the Act at the places of work under the employer's control is guilty of an offence.

Maximum penalty: In the case of a small employer, 2 penalty units; in the case of a large employer, 10 penalty units.

Notification etc. of program by small employer

11. A small employer is not required to display or notify a workplace rehabilitation program at the places of work under the employer's control:

- (a) if the employer provides a copy of the program to any worker who requests a copy or who applies for compensation for any injury; or

- (b) if the employer makes other satisfactory arrangements to ensure that workers have access to a copy of the program.

Exemptions

12. The following classes of employers, to the extent indicated, are exempt from the requirement to establish a workplace rehabilitation program under section 152 of the Act:

- (a) employers (including bodies corporate constituted under the Strata Titles Act 1973) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned);
- (b) employers who hold owner-builders' permits under the Building Services Corporation Act 1989 (but only to the extent of workers employed for the purposes of the work to which the permits relate);
- (c) employers (being corporations) who only employ workers who are directors of the corporation;
- (d) employers who only employ workers who are members of the employer's family;
- (e) employers who only employ workers who perform work while outside New South Wales;
- (f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).

PART 3—ACCREDITATION OF REHABILITATION PROVIDERS

Application for certificate of accreditation

13. (1) A person may apply to the Authority for a certificate of accreditation.

(2) Two or more persons jointly providing, or intending to jointly provide, rehabilitation services may (but are not required to) apply for a joint certificate of accreditation.

(3) An application must:

- (a) be in the form approved by the Authority; and
- (b) contain such particulars and be accompanied by such documents as may be required by that form; and
- (c) be accompanied by such fee as the Authority may determine.

Determination of application

14. (1) The Authority is to determine an application for a certificate of accreditation:

- (a) by granting a certificate to the applicant in the applicant's name, or, if there is more than one applicant, in their joint names; or
- (b) by refusing to grant a certificate.

(2) In determining an application for a certificate of accreditation, the Authority is to have regard to:

- (a) the application; and
- (b) in relation to the applicant or each applicant (if more than one):
 - (i) if the applicant is a natural person—the desirability of granting individual accreditation to natural persons; and
 - (ii) the capacity of the applicant to comply with the standards for rehabilitation providers; and
 - (iii) any information supplied by a trade union or employer organisation relating to the applicant's provision of rehabilitation services; and
 - (iv) any complaint lodged with the Authority against the applicant by a client of the applicant; and
 - (v) information procured in the course of any interviews with or examination of premises used by the applicant; and
 - (vi) verification of any references supplied by the applicant; and
- (c) any relevant information relating to workers compensation costs and statistics concerning the return to work of injured workers; and
- (d) such other matters as the Authority thinks fit.

(3) Before dealing with an application under this clause, the Authority may refer the application to the Council for a report and recommendation.

(4) The Authority must not grant a certificate unless:

- (a) the Authority has considered the Council's report and recommendation (if any) on the application; and
- (b) in the case of an application by a natural person or natural persons—the Authority is of the opinion that the applicant or each applicant is a fit and proper person to hold a certificate and is of or above the age of 18 years; and

- (c) in the case of an application by a corporation:
 - (i) the Authority is of the opinion that the corporation is a fit and proper person to hold a certificate; and
 - (ii) each director of the corporation would, if the application had been made by the director, be a fit and proper person to be granted a certificate.

Form of certificate of accreditation

15. (1) A person may be granted a Certificate of accreditation in respect of one or more of the following classes of accreditation:

- (a) a workplace based occupational rehabilitation provider;
- (b) a regional occupational rehabilitation centre;
- (c) a specialist occupational rehabilitation provider.

(2) A certificate is to be in the form approved by the Authority and is to specify:

- (a) the name of the person or, in the case of a joint certificate, the names of the persons to whom the certificate is granted; and
- (b) the class or classes of accreditation for which the certificate is granted; and
- (c) in the case of a certificate in respect of the class referred to in subclause (1) (b)—the premises comprising the regional occupational rehabilitation centre.

Conditions of certificate

16. (1) It is a condition of every certificate of accreditation that the holder of the certificate must:

- (a) comply with the standards for rehabilitation providers which are appropriate for the class or classes of accreditation for which the certificate is granted, being standards of which the holder has been notified; and
- (b) in the case of a certificate in respect of the class referred to in clause 15 (1) (b)—give the Council at least 1 month's notice of any proposed change of address of the regional occupational rehabilitation centre.

(2) A certificate may be granted subject to such other conditions as may be specified in the certificate.

(3) The Authority may, by notice in writing served on the holder of a certificate, amend or revoke the conditions specified in the certificate or add to those conditions.

(4) Any such amendment, revocation or addition takes effect on and from a date specified in the Authority's notice, being a date at least 7 days after the notice is served on the holder of the certificate.

Amendment of certificate

17. (1) If a person who does not hold a certificate of accreditation proposes to provide a rehabilitation service jointly with the holder of a certificate, the person may apply to the Authority for the certificate to be amended by the addition of that person as a joint holder of the certificate.

(2) If a joint holder of a certificate ceases to provide rehabilitation services with any other joint holder of the certificate, any of the joint holders may apply to the Authority for the amendment of the certificate by the deletion of the name of a joint holder.

(3) The holder of a certificate may apply to the Authority for the specification of the class or classes of accreditation for which the certificate is granted to be amended.

(4) The holder of a certificate of a class referred to in clause 15 (1) (b) may apply to the Authority for the certificate to be amended by the substitution of the premises of the regional occupational rehabilitation centre.

(5) An application must:

- (a) be in the form approved by the Authority; and
- (b) contain such particulars and be accompanied by such documents as may be specified in that form; and
- (c) be accompanied by a fee of \$50.

(6) The Authority is to determine an application under this clause:

- (a) by granting the application and amending the certificate accordingly; or
- (b) by refusing the application.

(7) Before dealing with an application under this clause, the Authority may refer the application to the Council for a report and recommendation.

(8) The Authority is not to grant an application for the amendment of a certificate:

- (a) if the Authority would not have granted a certificate as so amended had an application been made for such a certificate under this Regulation; and
- (b) unless the Director-General of the Department of Health has concurred in the granting of the application.

(9) If an application referred to in subclause (1) is granted and the certificate is amended by specifying in the certificate the name of the person concerned, that person is taken to be a person to whom the certificate is granted.

Notice of refusal

18. (1) If the Authority refuses to grant or amend a certificate of accreditation, the Authority must forthwith cause notice of the refusal to be served on the applicant.

(2) In the case of a joint application, it is a sufficient compliance with subclause (1) if the notice of refusal is served on any one of the applicants.

(3) The Authority is taken to have refused to grant or amend a certificate (and is taken to have notified the applicant accordingly) if the Authority does not give a decision on an application within 4 months after the date of lodgment of the application.

Duration of certificates

19. (1) A certificate of accreditation remains in force, unless sooner cancelled or surrendered, for such period as may be determined by the Authority and specified in the certificate.

(2) A certificate may be renewed from time to time by the grant of a further certificate.

Surrender of certificates

20. A holder of a certificate of accreditation may surrender it by delivering it to the Authority with notice in writing that the Certificate is surrendered.

Duplicate certificates

21. If the Authority is satisfied that a certificate of accreditation has been lost or destroyed, the Authority may, on payment of a fee of \$10, issue a duplicate certificate.

Register of certificates

22. (1) The Authority is to cause a register of certificates of accreditation to be kept, in such form as the Authority determines, and is to cause to be recorded in the register in respect of each certificate:

- (a) the matters which by this Regulation are required to be specified in the certificate; and
- (b) particulars of any amendment of the certificate; and

(c) particulars of any cancellation, suspension or surrender of the certificate; and

(d) such other matters as the Authority thinks fit.

(2) The Authority may cause to be made such alterations of the register as are necessary to ensure that the register is an accurate record.

(3) The register may be inspected by any person at the office of the Authority during the Authority's usual office hours and copies of all or any part of the register may be taken on payment of a fee of \$4.

False or misleading statements

23. A person must not, in or in connection with an application for a certificate of accreditation or amendment of such a certificate, make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

Cancellation or suspension of certificate

24. (1) The Authority may cancel or suspend a certificate of accreditation if the Authority is satisfied:

- (a) that the holder of the certificate has made a statement in or in connection with an application for the certificate or amendment of the certificate which the holder knows to be false or misleading in a material particular; or
- (b) that the holder of the certificate has contravened a condition of the certificate; or
- (c) that the holder of the certificate has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment or penal servitude for 3 months or more; or
- (d) that the holder of the certificate, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit; or
- (e) that the holder of the certificate, being a corporation:
 - (i) is in the course of being wound up; or
 - (ii) is under administration; or
 - (iii) is a corporation in respect of the property of which a receiver or manager (or other controller within the meaning of the Corporations Law) has been appointed; or
 - (iv) has entered into a compromise or arrangement with its creditors; or

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- (f) that the holder of the certificate has not provided rehabilitation services for a continuous period of 3 months or more; or
 - (g) that the holder of the certificate is for any other reason not a fit and proper person to hold a certificate; or
 - (h) in the case of a holder of a certificate, being a corporation — that any director of the corporation:
 - (i) has been convicted of an offence referred to in paragraph (c); or
 - (ii) for any other reason would not be a fit and proper person to hold a certificate, if the certificate were held by the person.
- (2) Before determining whether a Certificate of accreditation should be cancelled or suspended, the Authority may refer the matter to the Council for a report and recommendation.
- (3) The grounds referred to in subclause (1) (except paragraph (f) are taken to exist:
- (a) in the case of a joint certificate — if those grounds apply to any holder of that certificate; or
 - (b) in the case of 2 or more Certificates held by persons providing rehabilitation services in partnership—if those grounds apply to any holder of any of those certificates.
- (4) Before cancelling or suspending a certificate, the Authority must give the holder of the certificate an opportunity of showing cause why the certificate should not be cancelled or suspended on such grounds as are notified to the holder.
- (5) The cancellation or suspension of a certificate does not take effect until notice in writing of the cancellation or suspension has been served on the holder of the certificate.

False claim of accreditation

25. A person must not falsely hold himself or herself out as being the holder of a certificate of accreditation.

Maximum penalty: 20 penalty units.

PART 4—MISCELLANEOUS

Repeal of 1988 Regulation

26. (1) The Workers Compensation (Workplace Rehabilitation Programs) Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under that Regulation is taken to have effect under this Regulation.

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PART 4—MISCELLANEOUS

26. Repeal of 1988 Regulation

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes only, the provisions of the Workers Compensation (Workplace Rehabilitation Programs) Regulation 1988 made under the Workers Compensation Act 1987.

The new Regulation deals with the following matters:

- (a) the time within which workplace rehabilitation programs must be established by employers;
- (b) the preparation by the Authority of standard workplace rehabilitation programs for adoption by small employers;
- (c) the enforcement of guidelines prepared under the Act for workplace rehabilitation programs;
- (d) empowering the Authority to give directions to employers to ensure that their workplace rehabilitation programs comply with the guidelines;
- (e) requiring the display in the workplace of rehabilitation programs;
- (f) exempting certain classes of employers from the requirement to establish a workplace rehabilitation program;
- (g) the accreditation of rehabilitation providers, including the making and determination of applications for accreditation, the conditions of accreditation, alterations to the details of accreditation, cancellation and suspension of accreditation, and the making of false claims of accreditation.

This Regulation is made under the Workers Compensation Act 1987, including section 239 (the general regulation making power) and the various sections mentioned in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
