



Workers' Compensation (Dust Diseases) Amendment (Reimbursement) Regulation 2001

under the

Workers' Compensation (Dust Diseases) Act 1942

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers' Compensation (Dust Diseases) Act 1942*.

JOHN DELLA BOSCA, M.L.C.,
Special Minister of State

Explanatory note

Section 8E of the *Workers' Compensation (Dust Diseases) Act 1942* (***the Act***) provides the Dust Diseases Board (***the Board***) with a right to be reimbursed for compensation paid or payable by it where damages are recovered or recoverable by or in respect of a disabled or deceased worker from a negligent person (other than the worker's employer).

The object of this Regulation is to amend the *Workers' Compensation (Dust Diseases) Regulation 1998* to facilitate the exercise by the Board of its rights under section 8E of the Act. More specifically the Regulation provides for the following:

- (a) a requirement for parties to certain proceedings to notify the Board of any award, judgment, settlement or agreement resulting in the final determination of the proceedings and to provide information about those proceedings to the Board,
- (b) the method of determination of amounts of reimbursement to be paid to the Board under section 8E of the Act,

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- (c) the interest payable on such amounts owing to the Board under section 8E of the Act,
- (d) the period within which such amounts must be paid.

This Regulation is made under the *Workers' Compensation (Dust Diseases) Act 1942*, including sections 8E and 10 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Workers' Compensation (Dust Diseases) Amendment (Reimbursement) Regulation 2001*.

2 Commencement

This Regulation commences on 1 January 2002.

3 Amendment of Workers' Compensation (Dust Diseases) Regulation 1998

The *Workers' Compensation (Dust Diseases) Regulation 1998* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

- (b) were commenced before the commencement of this Part but were not finally determined before that commencement.

Note. This Part commenced on 1 January 2002.

13 Definitions

In this Part:

first person and *second person* have the same meanings as in section 8E (3) of the Act.

final determination, in relation to proceedings, includes a final determination by judgment, verdict, award, settlement, agreement, dismissal, discontinuance or otherwise.

14 Notification of final determination of proceedings

- (1) A person (*the defendant*) against whom proceedings to which this Part applies have been taken must notify the Board in writing of any award, judgment, settlement or agreement resulting in the final determination of the proceedings.
- (2) The notification must be given to the Board within 28 days after the final determination.
- (3) The notification must be accompanied by the following documents:
 - (a) a document or documents that set out the following particulars:
 - (i) the name, address and date of birth of the person who commenced the proceedings (and if more than one, those particulars for each person),
 - (ii) a statement as to whether or not the defendant was sued in the capacity of employer,
 - (iii) a statement as to whether or not the defendant has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
 - (iv) the amount and extent of any such contribution or other payment,
 - (v) if a contribution or other payment (as referred to in subparagraphs (iii) and (iv)) has been or is to be made—a statement as to whether or not an

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- amount has been deducted from the contribution or payment as referred to in section 8E (3) (b) of the Act,
- (vi) the amount and extent of any such deduction,
 - (vii) the names and addresses of all parties to the award, judgment, settlement or agreement,
 - (viii) a statement as to whether or not any person against whom the proceedings were brought (other than the defendant) has made, or is required to make, any contribution or other payment in connection with the final determination of the proceedings,
 - (ix) the amount and extent of any such contribution or other payment,
 - (x) if a contribution or other payment (as referred to in subparagraphs (viii) and (ix)) has been or is to be made—a statement as to whether or not an amount has been deducted from the contribution or other payment as referred to in section 8E (3) (b) of the Act,
 - (xi) the amount and extent of any such deduction,
- (b) a copy (whether in electronic or hard copy form) of the following documents:
- (i) the final statement of claim in the proceedings,
 - (ii) the final particulars of damage filed by the person or persons who commenced the proceedings,
 - (iii) any award, judgment, terms of settlement, agreement, or other document (such as a deed of release) evidencing the terms of the final determination of the proceedings.
- (4) It is sufficient compliance with subclause (3) (a) to the extent that documents provided under subclause (3) (b) contain the particulars required by subclause (3) (a).
- (5) Where there is more than one defendant in proceedings to which this Part applies, each defendant is required to comply with this clause. In such a case, the Board may consent to a defendant complying with this clause on behalf of other defendants in the proceedings.

- (6) The Board may at any time by notice in writing require a defendant in proceedings to which this Part applies to provide to the Board, within 21 days or such longer period as the Board may allow, specified information or documents concerning the determination of the proceedings.
- (7) A person who fails to comply with a requirement imposed by or under this clause is guilty of an offence.
Maximum penalty: 1 penalty unit.
- (8) The Board may exempt any particular proceedings or class of proceedings from the requirements as to notification under this clause. Any exemption given for a class of proceedings is to be publicised in a manner determined by the Board and any revocation or variation of such an exemption must be similarly publicised.

15 Determination of amount of compensation

For the purposes of section 8E (8) of the Act, in cases where damages were paid otherwise than under an award or judgment, the amount of compensation referred to in section 8E (3) of the Act is to be determined in accordance with, and subject to, the following principles:

- (a) Subject to the following paragraphs, the amount of compensation (the *deducted compensation*) taken to have been deducted from the damages payable by the second person to the first person is the total of the following amounts as assessed by the Board:
 - (i) the amount of compensation paid by the Board to, or on behalf of, the first person up to the date of final determination, and
 - (ii) the present value of future benefits payable by the Board to, or on behalf of, the first person after that date (where the assessment of those future benefits is based on the assumption that the medical condition of the worker as to disablement and life expectancy will remain unchanged),

less any reduction required by section 8E (6) of the Act.

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- (b) The Board may by notice in writing served on the second person give the second person notice (an ***assessment notice***) of the amount of the deducted compensation assessed by the Board under paragraph (a). An assessment notice must include the Board's method of calculation and reasons for the assessment.
- Note.** When assessing the amount of the deducted compensation under paragraph (a), the Board does not include any damages for non-economic loss.
- (c) If a second person disputes the assessment of an amount of deducted compensation set out in an assessment notice, the second person may request that the Board reconsider the assessment (a ***reconsideration request***).
- (d) A reconsideration request must:
- (i) be in writing in the form approved by the Board, and
 - (ii) be lodged with the Board within 28 days after the service on the person of the assessment notice.
- (e) In reconsidering an assessment, the Board may consider the advice of accountants, actuaries, legal practitioners and other persons.
- (f) Following the reconsideration of the assessment, the Board may:
- (i) confirm the original assessment of the amount of the deducted compensation made under paragraph (a), or
 - (ii) if the Board considers that a lesser amount of deducted compensation is appropriate—issue an amended assessment notice setting out that lesser amount.
- (g) As soon as practicable (and in any event within 28 days) after the lodgement of a reconsideration request, the Board must notify the second person in writing of the outcome of the reconsideration. The notification must include the Board's reasons for its decision following the reconsideration.

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- (h) The second person is not entitled to make more than one reconsideration request in relation to an amount of deducted compensation.

16 Interest

- (1) Interest is payable on an amount that the second person is liable to pay under section 8E (3) (e) of the Act at the rate prescribed for the time being under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on judgment debts.
- (2) That interest begins to run from:
- (a) in a case where the damages have been paid under an award or judgment— the date of expiry of the 42 day period referred to section 8E (3) (d) of the Act, or
 - (b) in a case where the damages have been paid otherwise than under an award or judgment:
 - (i) if the second person has not lodged a reconsideration request before the expiry of the 28 day period referred to in clause 15 (d) (ii)—the date of expiry of the 42 day period referred to in clause 17 (a) (being 42 days after the service of an assessment notice referred to in clause 15 (b)), or
 - (ii) if the second person has lodged a reconsideration request before the expiry of the 28 day period referred to in clause 15 (d) (ii)—the date of expiry of the 28 day period referred to in clause 17 (b) (being 28 days after the second person is notified by the Board of the outcome of the reconsideration).
- (3) However, if the Board has issued an amended assessment notice in accordance with clause 15 (f) (ii), the amount of interest is to be calculated on the amount of deducted compensation set out in that amended notice.

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17 Reimbursement period

For the purposes of section 8E (3) (d) of the Act, in a case in which damages have been or are to be paid by the second person to the first person otherwise than under an award or judgment and the amount of compensation referred to in section 8E (3) of the Act is to be determined in accordance with clause 15, an amount that the second person is liable to pay to the Board under section 8E (3) of the Act must be paid:

- (a) if the second person does not lodge a reconsideration request before the expiry of the 28 day period referred to in clause 15 (d) (ii)—within 42 days after the service of the assessment notice determining the amount of compensation, or
- (b) if the second person lodges a reconsideration request before the expiry of the 28 day period referred to in clause 15 (d) (ii)—within 28 days after the second person is notified by the Board of the outcome of the reconsideration.

BY AUTHORITY
