



New South Wales

Workers Compensation (General) Amendment (Miscellaneous) Regulation 2001

under the

Workers Compensation Act 1987 and the Workplace Injury
Management and Workers Compensation Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made
the following Regulation under the *Workers Compensation Act 1987* and the
Workplace Injury Management and Workers Compensation Act 1998.

JOHN DELLA BOSCA, M.P.,

Special Minister of State

Explanatory note

The object of this Regulation is to amend the *Workers Compensation (General)
Regulation 1995* so as:

- (a) to amend provisions with respect to the form of notice of dispute about liability to reflect changes to dispute handling procedures, and
- (b) to create an offence for failure to comply with requirements of the *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act)* with respect to the giving of notice of a dispute about liability, and
- (c) to amend a provision concerning the form of notice to be posted up at a workplace, to reflect an amendment to the 1998 Act, and
- (d) to impose restrictions on the number of medical reports that can be obtained in a workers compensation matter, and
- (e) to require employers to provide certain information to insurers when requesting a certificate of currency of insurance, and

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- (f) to create new penalty notice offences and to expand the class of persons who are authorised to issue penalty notices, and
- (g) to amend the form of notice of a hearing loss injury so that the form will operate to better identify pre-existing injuries, and
- (h) to made a consequential amendment to the form of insurance policy to reflect changed procedures concerning premium disputes.

This Regulation is made under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, including sections 159 and 280 (the general regulation-making power) of the *Workers Compensation Act 1987* and sections 62, 74, 130, 155A, 231, 246 and 248 (the general regulation-making power) of the *Workplace Injury Management and Workers Compensation Act 1998*.

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1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Miscellaneous) Regulation 2001*.

2 Commencement

- (1) This Regulation commences on 4 March 2001, except as provided by subclause (2).
- (2) Schedule 1 [13] commences on 2 April 2001.

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

Schedule 1 Amendments

(Clause 3)

[1] Clause 40A Notice of dispute about liability

Omit “section 94A of the Act”. Insert instead “section 74 of the 1998 Act”.

[2] Clause 40A (c)

Omit “appropriate officer”. Insert instead “Principal Conciliator”.

[3] Clause 40A (d)

Omit the paragraph.

[4] Clause 40A (e)

Omit the paragraph. Insert instead:

- (e) include the address and fax number of the Principal Conciliator.

[5] Clause 40A

Omit “Section 94A of the Act” from the note at the end of the clause.
Insert instead “Section 74 of the 1998 Act”.

[6] Clause 40A (2) and (3)

Insert at the end of clause 40A:

- (2) A person who fails to comply with section 74 of the 1998 Act in respect of a claim for compensation is guilty of an offence.
Maximum penalty: 20 penalty units.
- (3) It is a defence to a prosecution for an offence of failing to comply with section 74 (2B) of the 1998 Act if it is established that the notice complied with guidelines issued by the Authority as to how the notice concerned was to be expressed.

[7] Clause 41 Form of notice to be posted up at workplace

Omit “under this clause” from clause 41 (2).

[8] Clause 41 (3)

Omit clause 41 (3).

[9] Part 13A

Insert after Part 13:

Part 13A Restrictions on obtaining medical reports

51E Definitions

In this Part:

claim means a claim for compensation payable or claimed to be payable under the 1987 Act.

proceedings means proceedings before a conciliator or the Compensation Court.

51F Restrictions on number of medical reports that can be admitted

- (1) In any proceedings on a claim:
 - (a) only one medical report in any particular specialty may be admitted on behalf of a party to the proceedings, and
 - (b) a medical report in a specialty may not be admitted on behalf of a party to the proceedings if another medical report in that specialty has already been admitted on behalf of the party in any other proceedings on the claim or in proceedings on a related claim.
- (2) Despite subclause (1) (b), a medical report in a specialty may be admitted in proceedings even if another medical report in that specialty has already been admitted in other proceedings on the claim or a related claim if:
 - (a) the medical report to be admitted is a permissible update (under clause 51G) of the medical report already admitted in the other proceedings, or

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- (b) the proceedings are lump sum compensation proceedings and the other proceedings were not lump sum compensation proceedings, but only so as to allow the admission of a medical report provided by the same medical practitioner who provided the medical report already admitted in the other proceedings.
- (3) The medical report allowed to be admitted under subclause (2) (b) can however be provided by another medical practitioner if the medical practitioner who provided the medical report already admitted in the other proceedings has ceased (permanently or temporarily) to practise in the specialty concerned.
- (4) Subclause (2) operates only as an exception to subclause (1) (b) and does not affect the requirement under subclause (1) (a) that only one medical report in a particular specialty may be admitted in proceedings on behalf of a party.
- (5) For the purposes of this clause, a medical report in more than one specialty is to be regarded as a medical report in each of those specialties.
- (6) In this clause:
 - lump sum compensation proceedings* means proceedings on a claim for compensation under Division 4 of Part 3 of the 1987 Act (whether or not the proceedings are also proceedings on a claim for any other compensation).
 - related claims* are claims or further claims for compensation in respect of the same injury, whether or not the claims are in respect of the same kind of compensation.

51G Permissible updates of medical reports

- (1) A medical report (*the update report*) is a permissible update of another medical report (*the original report*) if the update report is provided for the purpose of updating the original report and is provided:
 - (a) more than 6 months after the original report was provided, or
 - (b) because there has been a further material change in the worker's condition.

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- (2) The update report must have been provided by the medical practitioner who provided the original report except when that medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the update report can be provided by another medical practitioner.
 - (3) The update report can be provided as an addendum to the original report and in such a case the original report together with that addendum constitute the permissible update.

51H Restrictions on recovery of cost of medical reports

- (1) A party to proceedings on a claim is not entitled to be paid for or recover the cost of obtaining a medical report in connection with the claim unless the report:
 - (a) has been admitted in those proceedings on behalf of the party, or
 - (b) is a claims management phase report (as provided by subclause (2)).
- (2) The following medical reports are *claims management phase reports*:
 - (a) a medical certificate that accompanies a claim for weekly payments of compensation,
 - (b) any medical report provided by a medical practitioner as part of and in the course of treatment of the injured worker by the medical practitioner,
 - (c) any medical report provided by a medical practitioner in respect of an examination of the injured worker pursuant to a requirement of the employer in accordance with section 119 of the 1998 Act.

51I Medical treatment not affected

This Part does not affect any entitlement of an injured worker to be paid for or recover the cost of obtaining medical treatment.

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51J Reports of medical panels and referees not affected

This Part does not apply in respect of:

- (a) a medical report provided in respect of the examination of an injured worker by a medical panel or medical referee, or
- (b) a medical report provided for the purposes of section 121 of the 1998 Act by an approved medical specialist under that section.

51K Transitional

- (1) This Part applies only in respect of proceedings commenced after the commencement of this Part. In its application in respect of those proceedings, this Part extends to medical reports obtained before the commencement of this Part (subject to subclause (2)).
- (2) Clause 51H (Restrictions on recovery of cost of medical reports) does not apply in respect of a medical report that was obtained before the commencement of this Part, or that was obtained after that commencement as a result of an appointment made before that commencement.

[10] Clause 54B

Insert after clause 54A:

54B Information to be provided for certificate of currency

- (1) An employer who requests an insurer to provide a certificate of currency with respect to a policy of insurance must provide the insurer with a statement in a form approved by the Authority that contains a reasonable estimate of the wages that will be payable during the current period of insurance to workers employed by the employer.
- (2) An insurer may refuse to issue the requested certificate of currency until the employer complies with this clause.

[11] Clause 73A Penalty notice offences

Omit clause 73A (a). Insert instead:

- (a) each of the following offences is declared to be a penalty notice offence:
 - (i) an offence created by a provision of the 1987 Act specified in Column 1 of Part 1 of Schedule 5,
 - (ii) an offence created by a provision of the 1998 Act specified in Column 1 of Part 2 of Schedule 5,
 - (iii) an offence created by a provision of the *Workers Compensation (General) Regulation 1995* specified in Column 1 of Part 3 of Schedule 5,
 - (iv) an offence created by a provision of the *Workers Compensation (Insurance Premiums) Regulation 1995* specified in Column 1 of Part 4 of Schedule 5,

[12] Clause 73A (c) (iii)

Insert at the end of clause 73A (c) (ii):

- (iii) each officer of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act.

[13] Schedule 1 Forms

Omit items 5 and 6 (including the Table to item 6) from Form 1.

Insert instead:

- 5 Has the worker been paid any compensation for loss of hearing in Australia or elsewhere? YES/NO
If YES, give details:

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- 6 Using the following list, give the worker's complete work history in any noisy work in Australia or elsewhere, including work as an employee, in any business carried on by the worker (either alone or with anyone else), in military service or otherwise. Include work in the list even if unsure about how noisy the work was.

Type of occupation	State whether employee/ own business/ other (specify)	Name & address of employer, business or other	Period of work
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[14] Schedule 1 Form 4

Omit "correct premium to be charged" from Note 2 of the Notes to the Form. Insert instead "disputed aspect of the calculation".

[15] Schedule 5 Penalty notice offences

Insert in appropriate order in Part 1 (Provisions of the 1987 Act):

Section 163A (2)	Fail to produce certificate of currency for inspection	500
Section 163A (6)	Fraudulently alter certificate of currency	500
Section 163A (7)	Fail to notify error in certificate of currency	500

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Amendments

Schedule 1

[16] Schedule 5

Insert in appropriate order in Part 2 (Provisions of the 1998 Act):

Section 79A (4)	Fail to exchange information before conciliation	200
Section 80 (5)	Fail to comply with sec 80 direction	200
Section 81A (2)	Fail to provide documents before conciliation conference	200
Section 82 (3)	Fail to comply with conciliation conference summons	200
Section 90 (7)	Make false/misleading statement in connection with conciliation	200

[17] Schedule 5 Penalty notice offences

Insert in appropriate order in Part 2 (Provisions of the 1998 Act):

Section 155A (2)	Fail to produce certificate of currency for inspection	500
Section 155A (6)	Fraudulently alter certificate of currency	500
Section 155A (7)	Fail to notify error in certificate of currency	500

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Schedule 1 Amendments

[18] Schedule 5

Insert at the end of Schedule 5:

**Part 2 Provisions of the Workers Compensation
(General) Regulation 1995**

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Clause 40A (2)	Not comply sec 74 (notice when liability disputed)	200

**Part 3 Provisions of the Workers Compensation
(Insurance Premiums) Regulation 1995**

Column 1	Column 2	Column 3
Provision	Short description	Penalty \$
Clause 9 (1)	Fail to supply wages estimate/ actual wages return (cl 6 (1)/(2))	500
Clause 9 (1)	Fail to supply required declaration (cl 7)	500
Clause 9 (1)	Fail to supply declaration and statement (cl 8)	500

BY AUTHORITY