



# Workers Compensation (General) Amendment (Miscellaneous) Regulation 2002

under the

Workers Compensation Act 1987

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

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

## Explanatory note

The object of this Regulation is to amend the *Workers Compensation (General) Regulation 1995* to clarify and fine-tune the operation of amendments to workers compensation legislation made by the *Workers Compensation Legislation Amendment Act 2001* and the *Workers Compensation Legislation Further Amendment Act 2001* (*the amending Acts*).

Schedule 1 [1] makes it clear that an application for determination of a claim that is pending in the Compensation Court on 1 April 2002 may be amended after that day in relation to the same injury.

Schedule 1 [2] makes it clear that a reference to a judgment, order or award in clause 93 (3) (a) is a reference to a judgment, award or order of the Compensation Court. Schedule 1 [3] inserts a missing word.

Schedule 1 [8] deals with the situation where a medical dispute was referred to an approved medical specialist, medical panel or medical referee before 1 April 2002, but a certificate was not issued in respect of the dispute before that date. The amendment allows a certificate to be issued on or after 1 April 2002 that is

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admissible in proceedings before the Workers Compensation Commission. Schedule 1 [4]–[7] make amendments to clause 94 to ensure consistency with the amendment made by Schedule 1 [8].

Schedule 1 [9] modifies certain sections of the workers compensation legislation that are based on the concept of “permanent impairment” to provide for them to apply more aptly to a claim for lump sum compensation made under the workers compensation legislation before its amendment by the amending Acts.

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power) and clauses 5 and 8 of Part 18C of Schedule 6.

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## **Workers Compensation (General) Amendment (Miscellaneous) Regulation 2002**

### **1 Name of Regulation**

This Regulation is the *Workers Compensation (General) Amendment (Miscellaneous) Regulation 2002*.

### **2 Commencement**

This Regulation commences on 1 April 2002.

### **3 Amendment of Workers Compensation (General) Regulation 1995**

The *Workers Compensation (General) Regulation 1995* is amended as set out in Schedule 1.

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Schedule 1      Amendments

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**Schedule 1    Amendments**

(Clause 3)

**[1]    Clause 93 Transfer of existing claims**

Insert after clause 93 (2):

(2A) An application for determination by the Compensation Court that is pending on 1 April 2002 may be amended after that day if the amendment relates to the injury in respect of which the application for determination is made.

**[2]    Clause 93 (3) (a)**

Insert “of the Compensation Court” after “judgment, award or order” where firstly occurring.

**[3]    Clause 93 (3) (c)**

Insert “days” after “28”.

**[4]    Clause 94 Transitional provision—certificates**

Omit “binding medical” wherever occurring in clause 94 (1) and (2).

**[5]    Clause 94 (1)**

Insert “medical” before “dispute” where firstly occurring.

**[6]    Clause 94 (1) (a)**

Omit “conclusively presumed to be correct”.

Insert instead “conclusive evidence”.

**[7]    Clause 94 (1) (b)**

Omit “the dispute”.

Insert instead “a medical dispute about a matter as to which the certificate is conclusive evidence”.

**[8] Clause 94 (1A) and (1B)**

Insert after clause 94 (1):

(1A) If:

- (a) a medical dispute with respect to an existing claim was referred to an approved medical specialist under section 121 of the 1998 Act, or to a medical panel or medical referee under section 122 of the 1998 Act, before 1 April 2002, and
- (b) a certificate was not given for the dispute before 1 April 2002,

then after that day the specialist, panel or referee may proceed to (or continue to) make an assessment of the dispute and give a certificate as to findings on the dispute under the relevant section.

(1B) If a certificate is given as referred to in subclause (1A):

- (a) the certificate continues on and from 1 April 2002 to be conclusive evidence as to a matter on which it would have been conclusive evidence under section 121 or 122 of the 1998 Act or section 72 of the 1987 Act (as in force before its repeal by the *Workers Compensation Legislation Amendment Act 2001*), and
- (b) the certificate is admissible after that day in proceedings before the Commission, and
- (c) a medical dispute about a matter as to which the certificate is conclusive evidence is not required to be assessed under Part 7 of Chapter 7 of the 1998 Act (despite section 293 of the 1998 Act and clause 4 of Part 18C of Schedule 6 to the 1987 Act).

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### [9] Clauses 94A and 94B

Insert after clause 94:

#### 94A Modification of sec 281 of 1998 Act

Section 281 of the 1998 Act, as it applies to a claim in respect of an injury received before 1 January 2002, is modified for the purposes of clause 8 of Part 18C of Schedule 6 to the 1987 Act by replacing subsections (2) and (2A) with the following subsection:

- (2) A claim must be so determined within 2 months after the claimant has provided to the insurer all relevant particulars about the claim.

#### 94B Modification of sec 282 of 1998 Act

Section 282 of the 1998 Act is modified for the purposes of clause 8 of Part 18C of Schedule 6 to the 1987 Act by inserting at the end of the section:

- (5) In the application of this section to a claim in respect of an injury received before 1 January 2002, a reference in subsection (1) to “impairment” or “permanent impairment” is to be read as a reference to “loss” within the meaning of Division 4 of Part 3 of the 1987 Act (as in force before the commencement of the amendments made to that Division by the *Workers Compensation Legislation Amendment Act 2001* and the *Workers Compensation Legislation Further Amendment Act 2001*).

BY AUTHORITY