



Compensation Court Repeal (Transitional) Regulation 2003

under the

Compensation Court Repeal Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Compensation Court Repeal Act 2002*.

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Attorney General

Explanatory note

The *Compensation Court Repeal Act 2002* (*the Act*) abolishes the Compensation Court and transfers proceedings instituted and pending in that Court immediately before that abolition to the following:

- (a) in the case of proceedings concerning any matter arising under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998* (except for certain proceedings relating to coal miners and proceedings exempted from that transfer by the regulations)—the Workers Compensation Commission (*the WCC*),
- (b) in the case of all other proceedings (including those exempted from the transfer to the WCC)—the District Court.

The Act also provides that, for the purposes of the hearing and determination by the District Court of the proceedings transferred to it by the Act, the District Court has the same jurisdiction to examine, hear and determine matters as the Compensation Court had immediately before the repeal of the *Compensation Court Act 1984*. The Act further provides that that jurisdiction of the District Court is subject to the same limitations and restrictions as the jurisdiction of the Compensation Court was subject to immediately before that repeal.

The Act also operates to confer other jurisdiction of the Compensation Court on the District Court (for example, under the *Sporting Injuries Insurance Act 1978*).

2003 No 940

Compensation Court Repeal (Transitional) Regulation 2003

Explanatory note

The objects of this Regulation are:

- (a) to exempt certain classes of proceedings from transfer to the WCC (with the result that, by operation of section 7 (2) (a) of the Act, those proceedings are transferred to the District Court), and
- (b) to provide that pending proceedings that are transferred to the District Court are, after being dealt with by that Court or the Court of Appeal, to be treated as new claims for the purposes of any subsequent activities (such as a review, under section 55 of the *Workers Compensation Act 1987*, because of changed circumstances), and
- (c) to provide that certain decisions of the Compensation Court are to be taken, on and from 1 January 2004, to be decisions of the District Court for all purposes (such as the purposes of further orders, reconsiderations and appeals), and
- (d) to provide for the making and disposal of appeals against certain other decisions of the Compensation Court after its abolition by providing that those decisions are taken to be decisions of the WCC, and
- (e) to remove any doubt that the District Court has the powers necessary to allow it to deal in the same way as the Compensation Court could have dealt (had it not been abolished) with matters in respect of which the District Court has acquired jurisdiction consequent on the abolition of the Compensation Court.

This Regulation is made under the *Compensation Court Repeal Act 2002*, including section 11 (the power to make regulations containing provisions of a savings or transitional nature consequent on the enactment of that Act).

Contents

	Page
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Certain proceedings exempted from transfer to WCC	5
5 Finalised exempted proceedings	5
6 Certain awards of Compensation Court taken to be awards of District Court	6
7 Appeals against awards of Compensation Court after its abolition	6
8 Powers of District Court	7

2003 No 940

Clause 1 Compensation Court Repeal (Transitional) Regulation 2003

Compensation Court Repeal (Transitional) Regulation 2003

under the

Compensation Court Repeal Act 2002

1 Name of Regulation

This Regulation is the *Compensation Court Repeal (Transitional) Regulation 2003*.

2 Commencement

This Regulation commences on 1 January 2004.

3 Definitions

(1) In this Regulation:

award has the same meaning as it has in section 31 of the *Compensation Court Act 1984*.

new claim has the same meaning as it has in section 250 of the 1998 Act.

residual jurisdiction of the District Court means:

- (a) the District Court's jurisdiction to hear and determine the proceedings transferred to the District Court by section 7 of the Act, and
- (b) the other jurisdiction conferred on the District Court by operation of the Act.

the Act means the *Compensation Court Repeal Act 2002*.

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

WCC means the Workers Compensation Commission of New South Wales established by the 1998 Act.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Certain proceedings exempted from transfer to WCC

- (1) The following classes of proceedings, to the extent to which they would otherwise be transferred to the WCC by section 7 of the Act, are exempted from that transfer:
 - (a) proceedings that are part heard in the Compensation Court as at 31 December 2003,
 - (b) proceedings in respect of which, as at 31 December 2003, judgment in the Compensation Court is reserved.
- (2) If the Court of Appeal remits any proceedings in consequence of an appeal under section 32 of the *Compensation Court Act 1984* that:
 - (a) was filed on or before 31 December 2003 (or in respect of which application for leave to appeal was so filed), and
 - (b) is determined on or after 1 January 2004,those proceedings, when remitted, are taken to have been exempted from any transfer to the WCC by section 7 of the Act.

5 Finalised exempted proceedings

- (1) A claim under proceedings exempted under clause 4 from transfer to the WCC is to be treated as a new claim:
 - (a) 28 days after the day on which the District Court makes a final award determining the claim (including a consent award), or
 - (b) on the day on which the claim is resolved by an agreement between the parties registered under section 66A of the *Workers Compensation Act 1987*,

whichever occurs first.

Note. Although the claim has been determined, further action may be required in respect of the claim—for example, a review of weekly payments of compensation, under section 55 of the *Workers Compensation Act 1987*, because of changed circumstances. This clause ensures that such a review (and any other necessary action in respect of the claim) would be carried out by the Workers Compensation Commission and not the District Court.

- (2) However, if an appeal under section 32 of the *Compensation Court Act 1984* is made against the determination of the District Court, subclause (1) applies:
 - (a) if the Court of Appeal does not remit the matter—as if the reference to the District Court were a reference to the Court of Appeal, or

2003 No 940

Clause 6 Compensation Court Repeal (Transitional) Regulation 2003

- (b) if the Court of Appeal remits the matter—as if the reference to the final award of the District Court were a reference to its final award on the remittal.
- (3) The District Court retains jurisdiction to examine, hear and determine matters arising under section 112 (Costs) of the 1998 Act in respect of new claims referred to in subclause (1), but only if application for an order with respect to costs is made to the District Court within 28 days after the day on which the final award determining the claim was made (whether by the District Court or the Court of Appeal).
- (4) An award of the District Court in respect of a new claim referred to in subclause (1) is to be treated as an award of the WCC.

6 Certain awards of Compensation Court taken to be awards of District Court

An award of the Compensation Court in respect of proceedings relating to the residual jurisdiction of the District Court that were determined on or before 31 December 2003 is, on and from 1 January 2004, taken for all purposes to be an award of the District Court.

7 Appeals against awards of Compensation Court after its abolition

- (1) For the purposes of an appeal, on or after 1 January 2004, against an award of the Compensation Court in respect of proceedings relating to a jurisdiction other than the residual jurisdiction of the District Court:
 - (a) in the case of an award of a Judge of the Compensation Court—the award is taken to be a decision referred to in section 353 of the 1998 Act (that is, a decision of a Presidential member of the WCC), and
 - (b) in the case of an award of a commissioner or registrar of the Compensation Court—the award is taken to be a decision referred to in section 352 of the 1998 Act (that is, a decision of an Arbitrator of the WCC).
- (2) Subclause (1) extends to apply to an appeal that was filed on or before 31 December 2003 if:
 - (a) proceedings in respect of the appeal had not been determined by that date, and
 - (b) the Court of Appeal does not remit the matter.

8 Powers of District Court

- (1) For the purposes of exercising the residual jurisdiction of the District Court, the District Court is taken to have all the powers, authorities and duties that the Compensation Court had under the *Compensation Court Act 1984* immediately before its repeal.
- (2) Without limiting subclause (1):
 - (a) sections 17, 18, 24, 25, 31, 32, 38 and 41 of the *Compensation Court Act 1984* are taken to continue in force despite the repeal of that Act, and
 - (b) a reference in any of those sections to the Compensation Court, the Chief Judge of the Compensation Court or a Judge of the Compensation Court is taken to be a reference to the District Court, the Chief Judge of the District Court and a Judge of the District Court, respectively.
- (3) For avoidance of doubt, the District Court has jurisdiction to examine, hear and determine a matter that the Court of Appeal has, in consequence of the operation of clause 7 (1), remitted to the District Court for reconsideration.
- (4) This clause ceases to have effect on 30 June 2004.