



New South Wales

Workers Compensation Amendment (Insurance Reform—Transitional) Regulation 2007

under the

Workers Compensation Act 1987

Her Excellency the 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.,
Minister Assisting the Minister for Finance

Explanatory note

On 1 July 2007, the Uninsured Liability and Indemnity Scheme (*ULIS*), established under Division 6 of Part 4 of the *Workers Compensation Act 1987*, will be replaced with a scheme under which the Nominal Insurer becomes the insurer for claims made against employers who are uninsured or who cannot be identified. The object of this Regulation is to make transitional provisions as a consequence of the change.

This Regulation also updates a reference to ULIS in the *Workers Compensation Regulation 2003*.

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power) and Parts 19A and 20 of Schedule 6.

2007 No 309

Clause 1 Workers Compensation Amendment (Insurance Reform—Transitional)
Regulation 2007

Workers Compensation Amendment (Insurance Reform—Transitional) Regulation 2007

under the

Workers Compensation Act 1987

1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Insurance Reform—Transitional) Regulation 2007*.

2 Commencement

This Regulation commences on 1 July 2007.

3 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] **Clause 28 Claims relating to uninsured liabilities**

Omit “under the Uninsured Liability and Indemnity Scheme”.
Insert instead “under Division 6 of Part 4 of the Act”.

[2] **Part 23, Division 5, Subdivision 1**

Insert before clause 239:

Subdivision 1 Insurance reforms

[3] **Clause 239 Interpretation**

Omit “Division” from clause 239 (1) where firstly occurring and from clause 239 (2).
Insert instead “Subdivision”.

[4] **Clause 239**

Omit “Division” from clause 239 (1) where secondly occurring.
Insert instead “Regulation”.

[5] **Clause 247 GIO General Limited authorised to act as temporary agent of Nominal Insurer**

Omit “Division” wherever occurring. Insert instead “Subdivision”.

[6] **Part 23, Division 5, Subdivision 2**

Insert after clause 247:

Subdivision 2 Uninsured Liability and Indemnity Scheme

247A Interpretation

In this Subdivision:

commencement date means 1 July 2007.

new Scheme means the arrangements made under the provisions of Division 6 of Part 4 of the 1987 Act as amended by the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

old Scheme means the Uninsured Liability and Indemnity Scheme constituted by Division 6 of Part 4 of the 1987 Act as in force before the commencement date.

247B Uninsured Liability and Indemnity Scheme

- (1) On and from the commencement date:
 - (a) the assets, rights and liabilities of the Authority and the WorkCover Authority Fund in respect of the old Scheme become assets, rights and liabilities of the Nominal Insurer and the Insurance Fund in respect of the new Scheme, and
 - (b) any entitlement to payment from the WorkCover Authority Fund arising with respect to a claim under the old Scheme becomes an entitlement to payment from the Insurance Fund in that respect, and
 - (c) any liability of a person to reimburse an amount to the WorkCover Authority Fund in respect of a payment made under the old Scheme becomes a liability to reimburse that amount to the Insurance Fund.
- (2) A claim made under the old Scheme and not determined before the commencement date is taken to be a claim made under the new Scheme.
- (3) Any act, matter or thing done or omitted to be done in relation to the old Scheme by the Authority before the commencement date is (to the extent to which that act, matter or thing has any force or effect immediately before that date) taken to have been done or omitted to be done in relation to the new Scheme by the Nominal Insurer.
- (4) Without limiting subclause (3), any payment made by the Authority from the WorkCover Authority Fund in respect of a claim under the old Scheme before the commencement date is taken to be a payment made by the Nominal Insurer from the Insurance Fund in respect of a claim under the new Scheme.
- (5) A reference in a notice or other instrument served, published or otherwise made under Division 6 of Part 4 of the 1987 Act and that has force or effect immediately before the commencement date:
 - (a) to the Authority—is taken to be a reference to the Nominal Insurer, and
 - (b) to the WorkCover Authority Fund—is taken to be a reference to the Insurance Fund, and
 - (c) to the Uninsured Liability and Indemnity Scheme—is taken to be a reference to the new Scheme.
- (6) A reference to the Authority or the WorkCover Authority Fund in a determination or order of the Commission made under section 144, 145 or 147 of the 1987 Act and with effect

immediately before the commencement date is taken to be a reference to the Nominal Insurer or the Insurance Fund, as appropriate.

- (7) A submission made to the Authority after the commencement date in accordance with a notice issued by the Authority under section 146 (2) of the 1987 Act before that date is taken to have been made to the Nominal Insurer.

247C Appeals against decisions of Authority

- (1) Section 144 of the 1987 Act continues to apply, as if it had not been repealed, to and in respect of an application made under that section but not determined before the commencement date.
- (2) A claimant under the old Scheme who is dissatisfied with a decision of the Authority made before the commencement date in respect of a claim for compensation under that Scheme may apply to the Commission for determination of the claim.
- (3) If such an application is made:
- (a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Nominal Insurer as respondents to the proceedings, and
 - (b) the Nominal Insurer may, by service of a notice on any person who, in the opinion of the Nominal Insurer, may be liable to pay to the applicant compensation under the 1987 Act (or may have insured that liability), join that person as a party to the proceedings.
- (4) The Commission may hear and determine any such application and may make such orders in relation to the application as the Commission thinks fit.
- (5) In a case where an employer named as a respondent as referred to in subclause (3) is a corporation that has ceased to exist or a deceased person whose estate has been distributed, the applicant is not, subject to any rules of the District Court or the Commission, required to serve a copy of the application on that person.

247D Court proceedings for work injury damages

- (1) Section 144A of the 1987 Act continues to apply, as if it had not been repealed, to and in respect of court proceedings commenced under that section but not determined before the commencement date.

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Schedule 1 Amendments

- (2) For the purpose of court proceedings referred to in subclause (1), a reference in section 144A of the 1987 Act to the WorkCover Authority Fund is taken to be a reference to the Insurance Fund.

BY AUTHORITY
