



New South Wales

# Workers Compensation Amendment 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

The object of this Regulation is to remake, with only minor changes in substance, the provisions of the *Workplace Injury Management and Workers Compensation Regulation 2002*. That Regulation is repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*. The provisions of that Regulation (the **transferred provisions**) will be incorporated in the *Workers Compensation Regulation 2003*, rather than being remade as a stand-alone Regulation.

The transferred provisions provide for:

- (a) the modification of certain provisions of the *Workplace Injury Management and Workers Compensation Act 1998* as they apply to self-insurers,
- (b) requirements with respect to the establishment and notification of return-to-work programs,
- (c) requirements with respect to the engagement of return-to-work co-ordinators and the functions of those co-ordinators,
- (d) offences for failure to comply with certain of the transferred provisions and Chapter 3 (Workplace injury management) of the *Workplace Injury Management and Workers Compensation Act 1998*,
- (e) the accreditation of rehabilitation providers,
- (f) penalty notices and penalty amounts for offences under the transferred provisions.

This Regulation will enable the WorkCover Authority to determine fees payable in connection with certificates of accreditation as a rehabilitation provider. Previously such fees have been fixed by regulation.

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This Regulation is made under the *Workplace Injury Management and Workers Compensation Act 1998*, including section 248 (the general regulation-making power) and Chapter 3, and under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power).

## **Workers Compensation Amendment Regulation 2007**

under the

Workers Compensation Act 1987

### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment Regulation 2007*.

### **2 Commencement**

This Regulation commences on 1 September 2007.

**Note.** The *Workplace Injury Management and Workers Compensation Regulation 2002* is repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation transfers the provisions of the repealed Regulation, with some minor amendments, to the *Workers Compensation Regulation 2003*.

### **3 Amendment of Workers Compensation Regulation 2003**

The *Workers Compensation Regulation 2003* 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 3 Definitions

Insert in alphabetical order:

**accreditation** means accreditation as a provider of rehabilitation services.

**category 1 employer** means:

- (a) an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed \$50,000, if the period of insurance to which the premium relates were 12 months, or
- (b) an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed \$50,000, if the period of insurance to which each premium relates were 12 months, or
- (c) an employer who is self-insured, or
- (d) an employer who is insured with a specialised insurer and who employs more than 20 workers.

**category 2 employer** means an employer who is not a category 1 employer.

**guidelines** means the guidelines under section 52 (2) (a) of the 1998 Act.

**return-to-work program** means a return-to-work program established under section 52 of the 1998 Act with respect to policies and procedures (consistent with the injury management plan of the employer's insurer) for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

**standards for rehabilitation providers** means standards relating to the provision of rehabilitation services approved by the Authority.

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**[2] Part 6A**

Insert after Part 6:

**Part 6A Return-to-work programs****15A Time within which program to be established**

- (1) A return-to-work program required to be established by a category 1 employer must be established before the expiration of the period of 12 months after the employer becomes a category 1 employer.
- (2) A return-to-work program required to be established by a category 2 employer must be established before the expiration of the period of 12 months after the employer becomes a category 2 employer.
- (3) The Authority may, in a particular case, extend the period during which a return-to-work program is required to be established.

**Note.** Section 52 (2) (b) of the 1998 Act requires a return-to-work program to be developed by an employer in consultation with workers of the employer and any industrial union of employees representing those workers.

**15B Offence—failure to establish program**

An employer who fails to establish a return-to-work program under section 52 of the 1998 Act within the period required by this Regulation is guilty of an offence.

Maximum penalty:

- (a) in the case of a category 2 employer, 5 penalty units,
- (b) in the case of a category 1 employer, 20 penalty units.

**15C Standard return-to-work programs for category 2 employers**

- (1) The Authority may prepare (in accordance with the guidelines) standard return-to-work programs for category 2 employers generally or for different kinds of category 2 employers.
- (2) A category 2 employer who does not establish a separate return-to-work program in accordance with the 1998 Act may establish a return-to-work program by adopting a relevant standard return-to-work program prepared under this clause.
- (3) The Authority may include in a compensation claim form approved by the Authority under section 65 (1) (b) of the 1998 Act a copy of any standard return-to-work program prepared under this clause.

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### **15D Program to comply with guidelines etc**

- (1) An employer is not to be regarded as having established a return-to-work program unless the program complies with the guidelines and any directions under or requirements of this Regulation.
- (2) A category 2 employer who adopts a relevant standard return-to-work program under clause 15C is to be regarded as having duly established a return-to-work program.

### **15E Guidelines for programs—directions**

- (1) The Authority may give an employer directions in writing in connection with any return-to-work program established, or to be established, by the employer to ensure that the program complies with the guidelines.
- (2) The Authority is to review a direction given by it under this clause if the employer concerned requests a review but need not review any particular direction more than once.

### **15F Nomination in programs of accredited providers of rehabilitation services**

- (1) A return-to-work program must, if the guidelines so require, nominate an accredited provider of rehabilitation services (or a list of such accredited providers) for the purposes of the program.
- (2) Consultation on the nomination of an accredited provider of rehabilitation services is to be carried out in such circumstances and in such manner as the guidelines may provide.

### **15G Offence—failure to display or notify program**

An employer who fails to display or notify a return-to-work program in accordance with section 52 (2) (c) of the 1998 Act at the places of work under the employer's control is guilty of an offence.

Maximum penalty:

- (a) in the case of a category 2 employer, 2 penalty units,
- (b) in the case of a category 1 employer, 10 penalty units.

### **15H Notification etc of program by category 2 employer**

A category 2 employer is not required to display or notify a return-to-work program at the places of work under the employer's control:

- (a) if the employer provides a copy of the program to any worker who requests a copy or who claims compensation for any injury, or
- (b) if the employer makes other appropriate arrangements to ensure that workers have access to a copy of the program.

**15I Category 1 employers must have return-to-work co-ordinator**

- (1) A category 1 employer must:
  - (a) employ a person to be a return-to-work co-ordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or
  - (b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a return-to-work co-ordinator for injured workers of the employer.

Maximum penalty: 20 penalty units.

- (2) The following are examples of the arrangements that the guidelines can permit for the purposes of this clause:
  - (a) the engagement of a person under an arrangement with a person or organisation that provides return-to-work co-ordinators to employers,
  - (b) an arrangement under which a person is engaged on a shared basis by 2 or more employers.
- (3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b).
- (4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be return-to-work co-ordinators under subclause (1) (b).

**15J Functions of return-to-work co-ordinators**

An employer's return-to-work co-ordinator has such functions as may be specified in the guidelines.

**15K Shared return-to-work programs**

- (1) For the purposes of section 52 (5) of the 1998 Act, a group of 2 or more employers may establish a single return-to-work program for the members of the group if:

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- (a) those employers have engaged a person to be a return-to-work co-ordinator for injured workers of those employers on a shared basis, and
  - (b) in the opinion of the Authority:
    - (i) those employers are engaged in the same business, or
    - (ii) those employers operate in the same locality, or
    - (iii) those employers satisfy any requirements of the guidelines imposed for the purposes of this paragraph, and
  - (c) in the opinion of the Authority, those employers have complied with all of the requirements of the guidelines with respect to the establishment of a single return-to-work program for groups of employers.
- (2) The guidelines can require employers to obtain the approval of the Authority for:
- (a) the establishment of a single return-to-work program for a group of employers, and
  - (b) the terms of a single return-to-work program and any revisions or amendments to those terms.

#### 15L Exemptions

The following classes of employers, to the extent indicated, are exempt from the requirement to establish a return-to-work program under section 52 of the 1998 Act and from clause 15I:

- (a) employers (including bodies corporate for strata schemes or strata (leasehold) schemes) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned),
- (b) employers who hold owner-builders' permits under the *Home Building Act 1989* (but only to the extent of workers employed for the purposes of the work to which the permits relate),
- (c) employers (being corporations) who only employ workers who are directors of the corporation,
- (d) employers who only employ workers who are members of the employer's family,
- (e) employers who only employ workers who perform work while outside New South Wales,



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- (f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).

**[3] Clause 17**

Omit the clause. Insert instead:

**17 Occupational rehabilitation service—additional services**

For the purposes of the definition of *occupational rehabilitation service* in section 59 of the Act, the service of monitoring a return-to-work plan is prescribed.

**[4] Part 7A**

Insert after Part 7:

**Part 7A Accreditation of rehabilitation providers**

**31A Application for certificate of accreditation**

- (1) A person may apply to the Authority for a certificate of accreditation.
- (2) Two or more persons jointly providing, or intending to jointly provide, rehabilitation services may (but are not required to) apply for a joint certificate of accreditation.
- (3) An application must:
  - (a) be in the form approved by the Authority, and
  - (b) contain such particulars and be accompanied by such documents as may be required by that form, and
  - (c) be accompanied by such fee as the Authority may determine.

**31B Determination of application**

- (1) The Authority is to determine an application for a certificate of accreditation:
  - (a) by granting a certificate to the applicant in the applicant's name, or, if there is more than one applicant, in their joint names, or
  - (b) by refusing to grant a certificate.
- (2) In determining an application for a certificate of accreditation, the Authority is to have regard to:

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- (a) the application, and
  - (b) in relation to the applicant or each applicant (if more than one):
    - (i) if the applicant is a natural person—the desirability of granting individual accreditation to natural persons, and
    - (ii) the capacity of the applicant to comply with the standards for rehabilitation providers, and
    - (iii) any information supplied by a trade union or employer organisation relating to the applicant's provision of rehabilitation services, and
    - (iv) any complaint lodged with the Authority against the applicant by a client of the applicant, and
    - (v) information procured in the course of any interviews with or examination of premises used by the applicant, and
    - (vi) verification of any references supplied by the applicant, and
  - (c) any relevant information relating to workers compensation costs and statistics concerning the return to work of injured workers, and
  - (d) such other matters as the Authority thinks fit.
- (3) The Authority must not grant a certificate unless:
- (a) in the case of an application by a natural person or natural persons—the Authority is of the opinion that the applicant or each applicant is a fit and proper person to hold a certificate and is of or above the age of 18 years, and
  - (b) in the case of an application by a corporation:
    - (i) the Authority is of the opinion that the corporation is a fit and proper person to hold a certificate, and
    - (ii) each director of the corporation would, if the application had been made by the director, be a fit and proper person to be granted a certificate.

#### **31C Form of certificate of accreditation**

- (1) A person may be granted a certificate of accreditation in respect of one or more of the following classes of accreditation:
  - (a) a provider of services related to return to work with the pre-injury employer,

- (b) a provider of services related to return to work with a different employer,
  - (c) a provider of specialist occupational rehabilitation services.
- (2) A certificate is to be in the form approved by the Authority and is to specify:
- (a) the name of the person or, in the case of a joint certificate, the names of the persons to whom the certificate is granted, and
  - (b) the class or classes of accreditation for which the certificate is granted.

**31D Conditions of certificate**

- (1) It is a condition of every certificate of accreditation that the holder of the certificate must comply with the standards and conditions for rehabilitation providers which are appropriate for the class or classes of accreditation for which the certificate is granted, being standards of which the holder has been notified.
- (2) A certificate may be granted subject to such other conditions as may be specified in the certificate.
- (3) The Authority may, by notice in writing served on the holder of a certificate, amend or revoke the conditions specified in the certificate or add to those conditions.
- (4) Any such amendment, revocation or addition takes effect on and from a date specified in the Authority's notice, being a date at least 7 days after the notice is served on the holder of the certificate.

**31E Amendment of certificate**

- (1) The Authority may amend a certificate:
  - (a) on the application of a person who does not hold a certificate and proposes to provide a rehabilitation service jointly with the holder of a certificate, by adding the name of the person as a joint holder of the certificate, or
  - (b) on the application of a joint holder of a certificate who ceases to provide rehabilitation services, by deleting the person's name from the certificate, or
  - (c) on the application of a holder of a certificate, by amending the specification of the class or classes of accreditation for which the certificate is granted.

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- (2) An application under this clause must:
  - (a) be in the form approved by the Authority, and
  - (b) contain such particulars and be accompanied by such documents as may be specified in that form, and
  - (c) be accompanied by such fee as the Authority may determine.
- (3) The Authority is to determine an application under this clause:
  - (a) by granting the application and amending the certificate accordingly, or
  - (b) by refusing the application.
- (4) If an application referred to in subclause (1) (a) is granted and the certificate is amended by specifying in the certificate the name of the person concerned, that person is taken to be a person to whom the certificate is granted.

#### **31F Notice of refusal**

- (1) If the Authority refuses to grant or amend a certificate of accreditation, the Authority must as soon as practicable cause notice of the refusal to be served on the applicant.
- (2) In the case of a joint application, it is a sufficient compliance with subclause (1) if the notice of refusal is served on any one of the applicants.
- (3) The Authority is taken to have refused to grant or amend a certificate (and is taken to have notified the applicant accordingly) if the Authority does not give a decision on an application within 4 months after the date of lodgment of the application.

#### **31G Duration of certificates**

- (1) A certificate of accreditation remains in force, unless sooner cancelled or surrendered, for such period as may be determined by the Authority and specified in the certificate.
- (2) A certificate may be renewed from time to time by the grant of a further certificate.

#### **31H Surrender of certificates**

A holder of a certificate of accreditation may surrender it by delivering it to the Authority with notice in writing that the certificate is surrendered.

**31I Duplicate certificates**

If the Authority is satisfied that a certificate of accreditation has been lost or destroyed, the Authority may, on payment of such fee as the Authority may determine, issue a duplicate certificate.

**31J Register of certificates**

- (1) The Authority is to cause a register of certificates of accreditation to be kept, in such form as the Authority determines, and is to cause to be recorded in the register in respect of each certificate:
  - (a) the matters which by this Regulation are required to be specified in the certificate, and
  - (b) particulars of any amendment of the certificate, and
  - (c) particulars of any cancellation, suspension or surrender of the certificate, and
  - (d) such other matters as the Authority thinks fit.
- (2) The Authority may cause to be made such alterations of the register as are necessary to ensure that the register is an accurate record.
- (3) The register may be inspected by any person at the office of the Authority during the Authority's usual office hours and copies of all or any part of the register may be taken on payment of such fee as the Authority may determine.

**31K False or misleading statements**

A person must not, in or in connection with an application for a certificate of accreditation or amendment of such a certificate, make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

**31L Cancellation or suspension of certificate**

- (1) The Authority may cancel or suspend a certificate of accreditation if the Authority is satisfied:
  - (a) that the holder of the certificate has made a statement in or in connection with an application for the certificate or amendment of the certificate that the holder knows to be false or misleading in a material particular, or
  - (b) that the holder of the certificate has contravened a condition of the certificate, or

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- (c) that the holder of the certificate has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more, or
  - (d) that the holder of the certificate, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit, or
  - (e) that the holder of the certificate, being a corporation:
    - (i) is in the course of being wound up, or
    - (ii) is under administration, or
    - (iii) is a corporation in respect of the property of which a receiver or manager (or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth) has been appointed, or
    - (iv) has entered into a compromise or arrangement with its creditors, or
  - (f) that the holder of the certificate has not provided rehabilitation services for a continuous period of 3 months or more, or
  - (g) that the holder of the certificate is for any other reason not a fit and proper person to hold a certificate, or
  - (h) in the case of a holder of a certificate, being a corporation—that any director of the corporation:
    - (i) has been convicted of an offence referred to in paragraph (c), or
    - (ii) for any other reason would not be a fit and proper person to hold a certificate, if the certificate were held by the person.
- (2) The grounds referred to in subclause (1) (except paragraph (f)) are taken to exist:
- (a) in the case of a joint certificate—if those grounds apply to any holder of that certificate, or
  - (b) in the case of 2 or more certificates held by persons providing rehabilitation services in partnership—if those grounds apply to any holder of any of those certificates.
- (3) Before cancelling or suspending a certificate, the Authority must give the holder of the certificate an opportunity to show cause why the certificate should not be cancelled or suspended on such grounds as are notified to the holder.

- (4) The cancellation or suspension of a certificate does not take effect until notice in writing of the cancellation or suspension has been served on the holder of the certificate.

**31M False claim of accreditation**

A person must not falsely hold himself or herself out as being the holder of a certificate of accreditation.

Maximum penalty: 20 penalty units.

**[5] Clause 32A**

Insert after clause 32:

**32A Employer must give early notification of significant workplace injury**

A person who fails to comply with section 44 (2) of the 1998 Act is guilty of an offence.

Maximum penalty: 20 penalty units.

**[6] Part 11A**

Insert after Part 11:

**Part 11A Modification of provisions applying to self-insurers**

**53AA Interpretation**

- (1) When one or more subsidiaries of the holder of a licence as a self-insurer under the 1987 Act is endorsed on the licence, each of those endorsed subsidiaries and the licence holder are **group self-insurers** for the purposes of this Part.
- (2) The holder of a licence as a group self-insurer may for the purposes of this Part, by notice in writing to the Authority from time to time, designate any one or more of the group self-insurers covered by the licence as **designated insurer** for some or all of the group self-insurers. The licence holder can designate itself as a designated insurer.
- (3) Except where otherwise expressly provided, this Part provides for the modification of provisions of Chapter 3 of the 1998 Act in their application to the following self-insurers:

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- (a) a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme,
- (b) a group self-insurer for whom there is a designated insurer.

#### **53AB References to "insurer"**

- (1) Sections 43, 44, 45, 47, 52 and 57 of the 1998 Act are to be read as if:
  - (a) a reference to *insurer* were, in the case of a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme, a reference to the Self Insurance Corporation, and
  - (b) a reference to *insurer* were, in the case of a self-insurer for whom there is a designated insurer, a reference to that designated insurer, and
  - (c) the Self Insurance Corporation were the insurer of each employer who is a Government employer covered for the time being by the Government's managed fund scheme, and
  - (d) the designated insurer for a group self-insurer were the insurer of the group self-insurer.
- (2) A reference in sections 50 and 58 of the 1998 Act to *insurer* is to be read as including a reference:
  - (a) to the Self Insurance Corporation, when the insurer is a Government employer covered for the time being by the Government's managed fund scheme, and
  - (b) when the insurer is a group self-insurer for whom there is a designated insurer, to that designated insurer.

#### **53AC Modification of exceptions for self-insurers**

The following modifications are to be made to the 1998 Act:

- (a) section 43 (3)—omit "This subsection does not apply to a self-insurer.",
- (b) section 43 (4)—omit "(except when the insurer is a self-insurer)",
- (c) section 43 (5)—omit "This subsection does not apply when the employer is a self-insurer.",
- (d) omit section 44 (4),
- (e) section 45 (2)—omit "(except when the insurer is a self-insurer)",



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- (f) section 45 (5)—omit “This subsection does not apply when the insurer is a self-insurer.”,
  - (g) omit section 46 (3).

**53AD Preparation of injury management plan**

Section 45 (1) of the 1998 Act is replaced with the following subsection:

- (1) When it appears that a workplace injury is a significant injury, an injury management plan must be established for the injured worker by:
  - (a) if the self-insurer who is or may be liable to pay compensation to the injured worker is a Government employer covered for the time being by the Government’s managed fund scheme—the Self Insurance Corporation, or
  - (b) if the insurer who is or may be liable to pay compensation to the injured worker is a group self-insurer for whom there is a designated insurer—that designated insurer.

**53AE Self-insurer’s licence**

- (1) A reference in section 55 of the 1998 Act to *insurer’s licence* is, in the application of that section to a group self-insurer (whether or not a group self-insurer for whom there is a designated insurer), to be read as a reference to the licence as a self-insurer on which the group self-insurer is endorsed.
- (2) It is a condition of a licence as a self-insurer that the holder of the licence must ensure that any subsidiary of the holder endorsed on the licence complies with the subsidiary’s obligations under Chapter 3 of the 1998 Act.

**[7] Clause 202 Saving**

Omit “or the *Workers Compensation Transitional Regulation 1997*”.

Insert instead “, the *Workers Compensation Transitional Regulation 1997* or the *Workplace Injury Management and Workers Compensation Regulation 2002*”.

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### [8] Clause 208A

Insert after clause 208:

#### 208A Effect of repeal of section 152

A workplace rehabilitation program established under section 152 of the 1987 Act and in force immediately before the repeal of that section by Schedule 1 [67] to the *Workers Compensation Legislation Amendment Act 1998* is taken to be a return-to-work program established under section 52 of the 1998 Act. However, any such program does not have effect to the extent that it is inconsistent with the injury management program of the employer's insurer.

### [9] Part 23, Division 7

Insert after clause 250:

#### Division 7 2002 Regulation

##### 251 Definition

In this Division:

**2002 Regulation** means the *Workplace Injury Management and Workers Compensation Regulation 2002*.

##### 252 Savings and transitional provisions—workplace injury management

- (1) Part 2A (Return to work plans) of the *Workers Compensation (Workplace Injury Management) Regulation 1995*, as in force immediately before the repeal of that Part by the 2002 Regulation, continues to have effect in respect of injuries that happened before the commencement of Chapter 3 of the 1998 Act.
- (2) If an injury management plan has been prepared in compliance with section 45 of the 1998 Act in respect of an injury to a worker that happened before the commencement of Chapter 3 of the 1998 Act (and has been so prepared within the time within which a return-to-work plan under Part 2A of the *Workers Compensation (Workplace Injury Management) Regulation 1995* would have otherwise been required to be prepared):
  - (a) subclause (3) does not apply in respect of the injury, and
  - (b) despite section 41 (2) of the 1998 Act, sections 45 (7), 46, 47, 55, 56 and 57 of the 1998 Act apply in respect of the injury.

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- (3) Despite section 41 (2) of the 1998 Act, a reference in section 52, 53 and 54 of the 1998 Act to an injured worker is to be read as including a reference to an injured worker when the injury happened before the commencement of Chapter 3 of the 1998 Act.

**[10] Schedule 5 Penalty notice offences**

Insert in appropriate order in Columns 1 and 2 in Part 3 of the Schedule:

Clause 15B	50 (category 2 employer) 200 (category 1 employer)
Clause 15G	20 (category 2 employer) 100 (category 1 employer)
Clause 32A	500