



New South Wales

Workers Compensation Amendment (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 for Commerce

Explanatory note

The object of this Regulation is to allow workers whose proceedings for common law damages have been discontinued or struck out because the proceedings were commenced in the six months immediately prior to the commencement of amendments to the workers compensation legislation in 2001 (the **2001 amendments**) to claim lump sum compensation and, in certain cases, work injury damages as if the workers had been injured after the commencement of the 2001 amendments.

The commencement of a discontinued or struck out claim would otherwise constitute an irrevocable election under section 151A of the *Workers Compensation Act 1987* (as in force before the commencement of the 2001 amendments) with the effect of preventing an affected worker from claiming lump sum compensation in respect of his or her injuries. This, in turn, would prevent the worker from lodging a further claim for work injury damages because of the operation of section 280A of the *Workplace Injury Management and Workers Compensation Act 1998*.

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power) and clause 1 of Part 20 of Schedule 6 to the Act.

2007 No 96

Clause 1 Workers Compensation Amendment (Transitional) Regulation 2007

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Workers Compensation Act 1987

1 Name of Regulation

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

2 Amendment of Workers Compensation Regulation 2003

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

Schedule 1 Amendment

(Clause 2)

Part 23, Division 3, Subdivision 4A

Insert after clause 229:

Subdivision 4A Amendments relating to work injury damages—transitional provisions

229A Application of 2001 amendments relating to work injury damages to discontinued transitional proceedings

(1) In this Subdivision:

discontinued transitional proceedings means proceedings to recover damages in respect of a transitional injury that were commenced in the 6 month period immediately before the commencement of Schedule 1.1 to the *Workers Compensation Legislation Further Amendment Act 2001* and are discontinued or struck out in connection with the application to the proceedings of section 151C of the 1987 Act.

transitional injury means an injury notice of which was given to the employer in the 6 month period immediately before the commencement of Schedule 1.1 to the *Workers Compensation Legislation Further Amendment Act 2001*.

- (2) Despite clause 9 (1) of Part 18C of Schedule 6 to the 1987 Act, an amendment made by Schedule 1 to the *Workers Compensation Legislation Further Amendment Act 2001* extends to the recovery of damages in respect of a transitional injury in relation to which discontinued transitional proceedings were commenced (even though the proceedings were commenced before the commencement of that Schedule).
- (3) The commencement of discontinued transitional proceedings is to be ignored for the purposes of section 151A of the 1987 Act (as in force when the proceedings were commenced), with the result that the commencement of the proceedings does not operate (and is taken never to have operated) as an election to claim damages for the purposes of that section.
- (4) Section 151D of the 1987 Act does not apply to the commencement of proceedings in respect of a transitional injury that may be commenced because of the operation of this clause (and that could not otherwise have been commenced).

BY AUTHORITY