



New South Wales

James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012

under the

James Hardie Former Subsidiaries (Winding up and
Administration) Act 2005

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*.

GREG SMITH, MP
Attorney General

Explanatory note

The object of this Regulation is to amend the *James Hardie Former Subsidiaries (Winding up and Administration) Regulation 2007* to make provision for the payment (and the deferral of the payment) of statutory recovery claims during financial years in which the available funding is not sufficient to pay all of the claims in full.

This Regulation is made under the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*, including sections 32 (3) (b) and (4) and 69 (the general regulation-making power).

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James Hardie Former Subsidiaries (Winding up and Administration)
Clause 1 Amendment (Statutory Recovery Claims) Regulation 2012

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James Hardie Former Subsidiaries (Winding up and Administration) Act 2005

1 Name of Regulation

This Regulation is the *James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 **Amendment of James Hardie Former Subsidiaries (Winding up and Administration) Regulation 2007**

Clauses 4–6

Insert after clause 3 and renumber clauses 4 and 5 as clauses 5 and 6, respectively:

4 Payment of statutory recovery claims during periods of insufficient funding

- (1) For the purposes of section 32 (3) (b) of the Act, statutory recovery claims against a liable entity are to be paid in accordance with the provisions of this clause if the funding (the *available annual funding*) set aside under the Final Funding Agreement for the payment of such claims by the SPF trustee during a financial year beginning with the financial year commencing on 1 April 2012 will not be sufficient to cover the payment of all such claims (whether actual or anticipated) within the year concerned.

Note. This clause does not apply to limit the payment of statutory recovery claims if the available annual funding is sufficient to meet all existing and new claims during the financial year concerned.

- (2) Subject to subclauses (3), (4) and (5), the payment of statutory recovery claims from the available annual funding is to be deferred until the period of 7 days before the end of the financial year concerned (the *distribution period*).
- (3) If the available annual funding is sufficient to pay all new claims in full but not all existing claims, then:
- (a) all new claims are to be paid in full during the distribution period in priority over any existing claims, and
 - (b) any funding that remains from the available annual funding following the payment of all new claims is to be applied during the distribution period:
 - (i) to pay in full as many existing claims as is possible from the remaining funding (commencing with the earliest existing claim the payment of which remains outstanding), and
 - (ii) to pay in part one other existing claim with any funding that remains following the full payment of existing claims in accordance with subparagraph (i), and

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- (c) the payment of the whole or any part of an existing claim that remains outstanding is deferred until the next financial year at which partial or full payment of the claim is permitted by or under the Act.
- (4) If the available annual funding is insufficient to pay all new claims in full and there is only one claimant, then:
 - (a) the funding is to be applied during the distribution period:
 - (i) to pay in full as many new claims as is possible from that funding, and
 - (ii) to pay in part one other of the new claims with any funding that remains following the full payment of new claims in accordance with subparagraph (i), and
 - (b) the payment of the whole or any part of a new claim that remains outstanding is deferred until the next financial year at which partial or full payment of the claim is permitted by or under the Act, and
 - (c) the payment of the whole or any part of an existing claim that remains outstanding is deferred until the next financial year at which partial or full payment of the claim is permitted by or under the Act.
- (5) If the available annual funding is insufficient to pay all new claims in full and there is more than one claimant, then:
 - (a) the available annual funding is to be allocated between each claimant (a *claimant's allocation*) by reference to the value in total of new claims made by the claimant as a proportion of the value in total of new claims made by all claimants, and
 - (b) each claimant's allocation is to be applied during the distribution period:
 - (i) to pay in full as many of the claimant's new claims as is possible from that allocation, and
 - (ii) to pay in part one other of the claimant's new claims with any funding that remains following the full payment of new claims in accordance with subparagraph (i), and
 - (c) the payment of the whole or any part of a new claim that remains outstanding is deferred until the next financial year at which partial or full payment of the claim is permitted by or under the Act, and

- (d) the payment of the whole or any part of an existing claim that remains outstanding is deferred until the next financial year at which partial or full payment of the claim is permitted by or under the Act.
- (6) In this clause:
existing claim means any statutory recovery claim made in a previous financial year that remains unpaid (whether wholly or partly).
new claim means any statutory recovery claim made in the financial year concerned.