



# Workers Compensation Amendment (Further Transitional) Regulation 2012

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*.

GREG PEARCE, MLC  
Minister for Finance and Services

## **Explanatory note**

The object of this Regulation is to provide further transitional arrangements for the amendments made by the *Workers Compensation Legislation Amendment Act 2012*.

This Regulation is made under the *Workers Compensation Act 1987*, including Part 20 of Schedule 6.

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Clause 1            Workers Compensation Amendment (Further Transitional) Regulation 2012

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# **Workers Compensation Amendment (Further Transitional) Regulation 2012**

under the

Workers Compensation Act 1987

### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment (Further Transitional) Regulation 2012*.

### **2 Commencement**

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

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## Schedule 1      Amendment of Workers Compensation Regulation 2010

### [1]    Schedule 8 Savings and transitional provisions

Omit “1 January 2013” from clause 8. Insert instead “31 March 2013”.

### [2]    Schedule 8

Insert after clause 15:

#### 16    Continuation of weekly payments after second entitlement period—exemptions from application requirement

- (1)    Section 38 (3) (a) of the 1987 Act does not apply in respect of a claim for compensation made before 1 October 2012 if the second entitlement period for the claim expires before, or less than 1 month after, the weekly payments amendments first apply in respect of the claim.

**Note.** Section 38 (3) (a) requires a worker to apply before the end of the second entitlement period for the continuation of weekly payments after the second entitlement period. Subclause (1) removes the need for such an application if the second entitlement period ends less than 1 month before section 38 (3) (a) would become applicable to the claim.

- (2)    Section 38 (3) (a) of the 1987 Act does not apply in respect of a worker who is an existing recipient of weekly payments if:
- (a)    the second entitlement period for the claim expires less than 1 month after the insurer notifies the worker (as required by the WorkCover Guidelines) of the requirement under section 38 of the 1987 Act that the worker must apply to the insurer in writing before the end of the second entitlement period for continuation of weekly payments after the second entitlement period, or
  - (b)    the insurer fails to notify the worker of that requirement as required by the WorkCover Guidelines.
- (3)    A worker who, by virtue of subclause (1) or (2), is not required to apply before the end of the second entitlement period for continuation of weekly payments after the second entitlement period is, within 18 months of being assessed as having current work capacity, required to apply to the insurer in writing (in the form approved by the Authority) for continuation of weekly payments in order for the worker to continue to be entitled to weekly payments compensation.

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### **17 Period for making work capacity assessment of existing recipients of weekly payments**

A period of 18 months is prescribed for the purposes of clause 8 (2) of Part 19H of Schedule 6 to the 1987 Act.

**Note.** This clause makes 18 months the period within which an insurer must conduct a work capacity assessment of an existing recipient of weekly payments (instead of the period of 12 months currently required by clause 8 (2) of Part 19H of Schedule 6 to the 1987 Act).

### **18 Lump sum compensation for hearing loss—injury before 1.1.2002**

Section 69A of the 1987 Act (as in force before its repeal by the 2012 amending Act) continues to apply, despite its repeal, to a claim for compensation made on or after 19 June 2012 for loss of hearing resulting from an injury received before 1 January 2002.

### **19 Only one claim for permanent impairment compensation—injuries received before 1.1.2002**

- (1) In the application of section 66 (1A) of the 1987 Act to a claim resulting from an injury received before 1 January 2002:
  - (a) a reference in that subsection to permanent impairment compensation is taken to be a reference to lump sum compensation payable under Division 4 of Part 3 of the 1987 Act (as in force immediately before 1 January 2002), and
  - (b) a reference in that subsection to permanent impairment is taken to be a reference to an injury of a kind to which any such lump sum compensation applies.
- (2) Section 66 (1A) of the 1987 Act is deemed to be amended to the extent necessary to give effect to this clause.

### **20 Discontinuation of certain entitlements**

An existing recipient of weekly payments who has an entitlement arising under clause 9 (2) or 11 of Part 19H of Schedule 6 to the 1987 Act ceases to have that entitlement if, at any time after the commencement of the weekly payments amendments:

- (a) the worker ceases to be entitled to weekly payments of compensation, or
- (b) the worker no longer meets the criteria to be paid weekly payments of compensation under the provisions of Division 2 of Part 3 of the 1987 Act (as in force immediately before the commencement of the weekly payments amendments) in respect of which weekly payments of compensation were paid to the worker.

**21 Notice of increase in weekly payments of compensation**

If an existing recipient of weekly payments is receiving weekly payments of compensation in respect of a claim made before 1 October 2012, the person paying the compensation must, at least 3 months before increasing the amount of compensation payable to the worker, notify the worker in writing of the proposed increase and the date on which it is to take effect.

**22 Application of weekly payments amendments to existing recipients of weekly payments**

- (1) On the expiration of a period of 3 months after an insurer makes a work capacity decision arising from the first work capacity assessment (as required by Division 2 of Part 19H of Schedule 6 to the 1987 Act) of an existing recipient of weekly payments, the weekly payments amendments apply to the compensation payable under Division 2 of Part 3 of the 1987 Act to the worker in respect of any period of incapacity after the expiration of that period.

**Note.** Clause 9 (1) of Part 19H of Schedule 6 to the 1987 Act provides that the weekly payments amendments apply to an existing recipient of weekly payments 3 months after an insurer first conducts a work capacity assessment of the worker. Subclause (1) provides instead for the amendments to apply to such a worker 3 months after the insurer makes a work capacity decision in respect of the worker.

- (2) However, if, in the case of an existing recipient of weekly payments, the worker returns to work before the expiration of the 3-month period referred to in subclause (1), the weekly payments amendments apply, as from the date on which the worker returns to work, to the compensation payable under Division 2 of Part 3 of the 1987 Act to the worker in respect of any period of incapacity after that return to work.

**23 Work capacity decision to be made as soon as practicable after assessment**

An insurer must, for the purposes of Division 2 of Part 19H of Schedule 6 to the 1987 Act, make a work capacity decision in respect of an existing recipient of weekly payments as soon as practicable after the first work capacity assessment of the worker is conducted by the insurer as required by that Division.

**24 Existing recipients of weekly payments who reach retiring age**

An existing recipient of weekly payments who reaches the retiring age (within the meaning of section 52 of the 1987 Act) on or after 1 October 2012 but before 1 January 2013 is, subject to meeting the requirements under Subdivision 2 of Division 2 of

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Part 3 of the 1987 Act, entitled to 12 months' weekly payments  
from the date on which the person reaches that age.