



New South Wales

Workers Compensation Amendment (Transitional Provisions) Regulation 2015

under the

Workers Compensation Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

VICTOR DOMINELLO, MP
Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to make further transitional arrangements consequent on the enactment of the *Workers Compensation Amendment Act 2015* with respect to:

- (a) compensation for medical and related treatments and services, including:
 - (i) the removal of certain limitations and conditions relating to the payment of compensation to injured workers whose eligibility for the compensation has been extended consequent on certain amendments made by that Act, and
 - (ii) the application of certain amendments made by that Act to claims for compensation made before the commencement of the amendments, and
- (b) weekly payments of compensation to certain workers who have permanent impairment assessments pending or whose degree of permanent impairment has been assessed to be more than 20%.

This Regulation also removes the requirement for an insurer to forward notice of a workplace injury to the Nominal Insurer by way of electronic communication.

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

Workers Compensation Amendment (Transitional Provisions) Regulation 2015

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Transitional Provisions) Regulation 2015*.

2 Commencement

This Regulation commences on 4 December 2015 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Workers Compensation Regulation 2010

[1] Clause 40 Notification of workplace injury

Omit clause 40 (2).

[2] Schedule 8 Savings and transitional provisions

Omit clause 30.

[3] Schedule 8, clause 33

Insert before clause 33 (1):

- (1A) Section 59A of the 1987 Act (as substituted by the 2015 amending Act) extends to the compensation payable to any injured worker in respect of any period before 4 December 2015 but not before 17 September 2012.

[4] Schedule 8, clause 33 (2)

Omit “this clause”. Insert instead “subclause (1)”.

[5] Schedule 8, clause 33 (3)

Omit the subclause. Insert instead:

- (3) In this clause:

exempt medical treatment means any treatment, service or assistance referred to in Division 3 of Part 3 of the 1987 Act in respect of which compensation has become payable under that Division:

- (a) to a retiring-age worker by reason of the amendment made to section 52 of the 1987 Act by the 2015 amending Act, or
- (b) to any injured worker by reason of the substitution of section 59A of the 1987 Act by the 2015 amending Act.

[6] Schedule 8, clauses 36–38

Insert after clause 35:

36 Workers with highest needs

A worker to whom paragraph (b) of the definition of *seriously injured worker* in section 32A of the 1987 Act applied immediately before 4 December 2015 is taken to be a worker with highest needs for the purposes of Division 2 of Part 3 of that Act (as amended by the 2015 amending Act) until the degree of permanent impairment is assessed in respect of the worker’s injury.

37 Continuation of weekly payments after second entitlement period

- (1) The section 38 amendments do not apply to the determination of the compensation payable in respect of any period of incapacity occurring before 17 September 2012.
- (2) The requirement under section 38 (3A) of the 1987 Act that any application for continuation of weekly payments after the second entitlement period must be made no earlier than 52 weeks before the end of the second entitlement period does not apply in respect of a worker to whom compensation has become payable by reason of the section 38 amendments (and clause 9 (1) of

Part 19I of Schedule 6 to the 1987 Act in its application to those amendments) in respect of any period of incapacity occurring before 4 December 2015.

Note. A worker to whom subclause (2) and section 38 (3A) of the 1987 Act applies must apply to the insurer in writing (in the form approved by the Authority) to be entitled to compensation under section 38 of that Act.

- (3) A certificate of capacity provided under section 44B of the 1987 Act may relate to a period that is more than 90 days before the certificate is provided if:
- (a) compensation has become payable to the worker to whom the certificate relates by reason of the section 38 amendments (and clause 9 (1) of Part 19I of Schedule 6 to the 1987 Act in its application to those amendments), and
 - (b) the period to which the certificate relates occurred wholly during the period commencing on 17 September 2012 and ending on 3 December 2015 (inclusive).
- (4) In this clause:
- section 38 amendments* means the amendments made by Schedule 2 [4] and [5] to the 2015 amending Act to section 38 of the 1987 Act.

38 Weekly payments—workers with highest needs

- (1) Section 38A of the 1987 Act does not apply to the determination of the compensation payable in respect of any period of incapacity occurring before 17 September 2012.
- (2) Section 38A of the 1987 Act does not apply to a worker whose pre-injury average weekly earnings have been deemed to be equal to the transitional amount for the purposes of the application under clause 9 or 10 of Part 19H of Schedule 6 to the 1987 Act of the weekly payments amendments (within the meaning of that Part) to the worker.