



New South Wales

Workers Compensation Amendment Regulation 2018

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 Finance, Services and Property

Explanatory note

The object of this Regulation is to amend the *Workers Compensation Regulation 2016* to make provision with respect to the following matters as a consequence of the enactment of the *Workers Compensation Legislation Amendment Act 2018*:

- (a) the notification of decisions of insurers and the procedure for reviews by insurers of work capacity decisions and claims,
- (b) prescribing the use of mobile device applications as a method by which an employer may notify workers of return-to-work programs,
- (c) costs recoverable for legal services provided to an insurer or a claimant in connection with a work capacity decision,
- (d) other minor related matters.

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, and the *Workplace Injury Management and Workers Compensation Act 1998*, including sections 52 (2) and (4), 79 (1) (b) and (4), 287B and 337.

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment Regulation 2018*.

2 Commencement

This Regulation commences on 1 January 2019 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Workers Compensation Regulation 2016

[1] Clause 16A

Insert after clause 16:

16A Notification of program

A return-to-work program required to be notified to workers under section 52 of the 1998 Act may be notified by way of a computer program designed for use on a smartphone or other mobile device (in addition to any other method authorised by that section).

[2] Clause 17 Offence—failure to display or notify program

Omit “section 52 (2) (c) of the 1998 Act at the places of work under the employer’s control”.

Insert instead “section 52 (2) (c) and (d) of the 1998 Act”.

[3] Clause 18 Notification etc of program by category 2 employer

Omit “at the places of work under the employer’s control”.

Insert instead “in accordance with section 52 (2) (c) and (d) of the 1998 Act”.

[4] Clause 38

Omit the clause. Insert instead:

38 Notice of insurer decisions

- (1) A notice under section 78 of the 1998 Act of an insurer’s decision to dispute liability in respect of a claim or any aspect of a claim (except in connection with a work injury damages matter), or to discontinue or reduce the amount of weekly payments of compensation, is to contain the following information:
 - (a) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation, and by the employer in connection with the claim,
 - (b) a statement identifying all the reports of the type to which clause 41 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,
 - (c) a statement advising that a copy of a report required to be provided by the insurer under clause 41 (3) (except as provided by clause 41 (5) or (6)) accompanies the notice,
 - (d) details of the procedure for requesting a review of the decision,
 - (e) a statement to the effect that the worker can seek advice or assistance from the worker’s trade union organisation, from an Australian legal practitioner, from the Independent Review Officer or from any other relevant service established by the Authority,
 - (f) the contact details for the Independent Review Officer,
 - (g) the street address and the email address of the Registrar of the Commission,
 - (h) a summary, in the approved form, of the effect of the decision, the worker’s rights of review, the procedure for requesting a review and the

legal and other services that may be available to the worker to provide advice or assistance in relation to the dispute.

- (2) If the notice relates to a decision to discontinue weekly payments of compensation, the insurer must give a copy of the summary referred to in subclause (1) (h) to any current employer of the worker who is liable to pay the compensation (except in circumstances where the compensation is paid by the insurer).

38A Notice of insurer decisions—work injury damages

A notice under section 78 of the 1998 Act of an insurer's decision to dispute liability in a work injury damages matter is to contain the following information:

- (a) a statement to the effect that, before a claimant can commence court proceedings, the claimant must firstly serve a pre-filing statement (in accordance with section 315 of the 1998 Act) on the defendant and secondly refer the claim to the Commission for mediation (in accordance with section 318A of the 1998 Act),
- (b) a statement to the effect that the claimant is not entitled to raise matters in court proceedings that are materially different from those contained in the pre-filing statement, except with the leave of the court,
- (c) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation,
- (d) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from an Australian legal practitioner or from any relevant service established by the Authority,
- (e) the street address and the email address of the Registrar of the Commission or the Principal Registrar (within the meaning of the *District Court Act 1973*) of the District Court.

38B Notice requirements—coal miners

A notice under section 74 of the 1998 Act of an insurer's decision to dispute liability in a coal miner matter is to contain the following information:

- (a) a statement identifying all the reports and documents submitted by the worker in making the claim for compensation,
- (b) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from an Australian legal practitioner or from any relevant service established by the Authority,
- (c) a statement to the effect that the worker can refer the dispute for determination by the District Court,
- (d) if the insurer has referred or proposes to refer the dispute for determination by the District Court, a statement to that effect specifying the date of referral or proposed referral,
- (e) a statement to the effect that the matters that may be referred to the District Court are limited to matters notified in the notice, in a notice after a further review in correspondence prior to any such referral concerning an offer of settlement or in a request for a further review, except with the leave of the District Court,

- (f) the street address and the email address of the Principal Registrar (within the meaning of the *District Court Act 1973*) of the District Court.

Note. The repeal of section 74 of the 1998 Act by the *Workers Compensation Legislation Amendment Act 2018* does not apply to coal miners. See clause 5 of Part 19L of Schedule 6 to the 1987 Act.

[5] Clauses 42A and 42B

Insert after clause 42:

42A Review of decisions by insurer

- (1) A request under section 287A of the 1998 Act for a review of a decision of an insurer must be in writing.
- (2) The insurer must consider any relevant material submitted by the worker in connection with the request.
- (3) The request must not be dealt with by any person substantially involved in making the decision the subject of the request.

42B Notice of review decision

A notice under section 287A of the 1998 Act of an insurer's decision on a review is to:

- (a) be in writing, and
- (b) contain the information referred to in clause 38 (1), and
- (c) contain a concise and readily understandable statement of the reason for the insurer's decision and of the issues relevant to the decision, and
- (d) identify any provision of the workers compensation legislation on which the insurer relies in making the decision.

[6] Part 17, Division 3A Costs recoverable in reviews of work capacity decisions

Omit the Division.

[7] Clause 129 GST may be added to costs

Omit “, Division 3 (Costs recoverable in work injury damages matters) or Division 3A (Costs recoverable in reviews of work capacity decisions)” from clause 129 (1).

Insert instead “or Division 3 (Costs recoverable in work injury damages matters)”.

[8] Schedule 6 Maximum costs—compensation matters

Omit “dispute notice” wherever occurring in Parts 1 and 2. Insert instead “decision notice”.

[9] Schedule 6, clause 2 (1), definition of “decision notice” (as amended by item [8])

Insert after paragraph (b):

- (b1) a notice issued under section 78 of the 1998 Act, or

Schedule 2 Amendment of Workers Compensation Act 1987 No 70

[1] Schedule 6 Savings, transitional and other provisions

Transfer Part 21 and insert it before Part 20. Renumber Part 21 as Part 19L.

[2] Schedule 6, Part 19L (as amended by item [1])

Insert after clause 6:

6A Work capacity decision disputes—maximum costs during transitional period

(1) In this clause:

favourable finding, in relation to a merit review, means a finding or recommendation of the Authority that has the effect of increasing the amount of weekly payments of compensation payable to the worker concerned, as compared with the amount payable as a result of:

- (a) the review decision, or
- (b) the original work capacity decision that was the subject of the application for internal review,

whichever is the most recent decision.

internal review means a review by an insurer of an existing work capacity decision under section 44BB of the 1987 Act (as in force before the commencement of Schedule 1 to the 2018 amending Act).

merit review means a review of an existing work capacity decision under section 44BB (1) (b) of the 1987 Act (as in force before the commencement of Schedule 1 to the 2018 amending Act), but only if:

- (a) an internal review of the work capacity decision (the ***original work capacity decision***) has been conducted and the worker has been notified of the decision of the insurer with respect to the internal review (the ***review decision***), or
- (b) the insurer has not completed an internal review within 30 days after the application for internal review was made by the worker.

(2) The maximum costs that a legal practitioner is entitled to be paid by, or recover from, the insurer for providing a legal service to a worker in connection with an application or proposed application for a merit review are:

- (a) if the application is made and results in a favourable finding—\$1,800, or
- (b) in any other case—\$1,200.

Note. Division 3 of Part 4.3 of the *Legal Profession Uniform Law (NSW)* requires barristers and solicitors, before providing any services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of services concerned.

(3) However, subclause (2) is limited as follows:

- (a) only one amount for costs is payable in respect of the application or proposed application regardless of the number of original work capacity decisions or review decisions to be reviewed under the application or proposed application,
- (b) only one legal practitioner is entitled to be paid or recover costs in respect of providing the legal service to which subclause (2) applies,
- (c) without affecting the operation of paragraph (b)—if the worker retains more than one legal practitioner to provide a legal service in connection

- with a proposed application for merit review in relation to the same original work capacity decision, only the first legal practitioner so retained who provides the legal service is entitled to be paid or recover costs for providing that service,
- (d) the legal service must be provided within 30 days after the worker was notified of the review decision.
- (4) To avoid doubt, a legal practitioner is entitled to be paid or recover an amount referred to in this clause whether or not the worker makes an application for a merit review in connection with which the legal service was provided.
 - (5) A legal practitioner is not entitled to be paid or recover an amount referred to in this clause for providing a legal service in connection with an original work capacity decision made before the commencement of this clause.
 - (6) A cost fixed by this clause may be increased by the amount of any GST payable in respect of the service to which the cost relates.