



New South Wales

Workers Compensation Amendment (COVID-19 Weekly Payment Compensation) Regulation 2020

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*.

VICTOR DOMINELLO, MP
Minister for Customer Service

Explanatory note

The objects of this Regulation are to—

- (a) amend the *Workers Compensation Regulation 2016* to—
 - (i) provide for adjustments to be made to the relevant earning period for a worker who experiences a financially material reduction in total earnings because of a change to the worker's employment arrangements as a result of the impact of the COVID-19 pandemic, and
 - (ii) increase by 10% the maximum costs that a law practice or agent can recover for work in relation to a claim for compensation, and
- (b) amend the *Workers Compensation Act 1987* to take into account, for the purposes of determining the pre-injury average weekly earnings and current weekly earnings of a worker, payments made to the worker in connection with the Commonwealth's jobkeeper scheme.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 32A(2) and 280 (the general regulation-making power) and clause 2 of Schedule 3, and section 337 of the *Workplace Injury Management and Workers Compensation Act 1998*.

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (COVID-19 Weekly Payment Compensation) Regulation 2020*.

2 Commencement

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

Schedule 1 Amendment of Workers Compensation Regulation 2016

[1] Clause 8A Operation of Division

Insert after clause 8A(2)(d)—

- (e) Clause 8EA (Adjustment for prescribed periods relating to COVID-19).

[2] Clause 8EA

Insert after clause 8E—

8EA Adjustment for prescribed periods relating to COVID-19—Schedule 3, clause 2(3)(a) of 1987 Act

- (1) The relevant earning period for a worker in employment is to be adjusted in accordance with this clause if, during the unadjusted earning period, there was a change to the worker's employment arrangements as a direct result of the impact of the COVID-19 pandemic on the operations or general financial position of an employer of the worker.
- (2) If the change to the worker's employment arrangements resulted in a financially material reduction to the total earnings of the worker during the first prescribed period, the relevant earning period is to be adjusted by excluding the first prescribed period.
- (3) The relevant earning period for a worker to whom subclause (2) applies is to be further adjusted in accordance with subclause (4) if the change to the worker's employment arrangements resulted in no earnings in employment being paid or payable to the worker for a period of 2 or more days commencing on the first day of the second prescribed period.
- (4) For subclause (3), the relevant earning period is to be further adjusted by excluding each day, whether or not the day was a usual work day for the worker, of the period commencing on the first day of the second prescribed period and ending on the earlier of—
 - (a) the day immediately before the day on which earnings in any employment once again became payable to the worker, and
 - (b) the last day of the second prescribed period.
- (5) In this clause—

first prescribed period means the period on and from 23 March 2020 to 14 June 2020.

second prescribed period means the period on and from 15 June 2020 to 27 September 2020.

[3] Schedule 6 Maximum costs—compensation matters

Omit "\$4,000" from clause 6(2)(a). Insert instead "\$4,400".

[4] Schedule 6, clause 6(2)(b)

Omit "\$1,875". Insert instead "\$2,062.50".

[5] Schedule 6, Table 1

Omit the Table. Insert instead—

Table 1 General resolution types—costs payable

Item	General resolution (for general resolution types refer to Table 2)	Claimant		Insurer	
		Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
A	Lump sum compensation claim or dispute resolved <ul style="list-style-type: none"> before application accepted by the Registrar (Table 2—items 1–4—Claimant: item 2 only—Insurer)	\$3,130.90	\$4,142.90	\$1,992.40	N/A
B	Lump sum compensation claim or dispute resolved <ul style="list-style-type: none"> after application accepted by the Registrar and up to and including the issue of a Certificate of Determination (Table 2—items 1–4—Claimant: item 2 only—Insurer)	\$4,459.15	\$5,913.90 (or \$5,060.00 where clause 6 of Part 1 applies)	\$3,225.75 (or \$2,371.90 where clause 6 of Part 1 applies)	N/A
C	Other compensation claim or dispute resolved <ul style="list-style-type: none"> after decision notice issued and before application accepted by the Registrar, or before application accepted by the Registrar for a claim for compensation in relation to the death of a worker (Table 2—items 5–16)	\$3,617.90	\$4,788.05	\$2,966.45	\$3,921.50
D	Other compensation dispute resolved <ul style="list-style-type: none"> after application accepted by the Registrar, and up to and including the initial teleconference including consequential settlement attendances (Table 2—items 5–16)	\$4,895.55	\$6,495.80	\$4,244.10	\$5,629.25
E	Other compensation dispute resolved <ul style="list-style-type: none"> after initial teleconference and up to and including conciliation conference including consequential settlement attendances (Table 2—items 5–16)	\$5,376.25	\$7,140.95	\$4,636.25	\$6,147.90

Item	General resolution (for general resolution types refer to Table 2)	Claimant		Insurer	
		Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
F	Other compensation dispute resolved <ul style="list-style-type: none"> following conciliation conference and up to and including arbitration hearing <p>(Table 2—items 5–16)</p>	\$5,838.00	\$7,748.15	\$4,977.80	\$6,609.65

[6] Schedule 6, Tables 3 and 4

Omit the Tables. Insert instead—

Table 3 Special resolution types—costs payable

Item	Special resolution types	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
A	Interim payment dispute resolved				
	1 Dispute resolved by direction or agreement, after application accepted by the Registrar	\$2,087.25	\$1,771.00	N/A	N/A
	2 If further dispute about the same claim is resolved by direction or agreement, after application accepted by the Registrar	\$695.75	\$695.75	N/A	N/A
B	Workplace injury management dispute resolved				
	1 Dispute resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	\$2,435.15	\$2,118.90	\$2,435.15	\$2,118.90
	2 If further dispute about the same claim is resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	\$695.75	\$695.75	\$695.75	\$695.75
C	Resolution of other proceedings				

Item	Special resolution types	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
	1 As ordered or certified by the Commission or the Registrar	Upper limit of \$1,391.50	Upper limit of \$1,391.50	Upper limit of \$1,391.50	Upper limit of \$1,391.50
D	Registration of commutation agreement				
	1 Where agreement approved by the Authority and registered with the Registrar (including all preparation and documentation in approved form in accordance with Rules)	\$1,897.50	\$1,897.50	\$1,897.50	\$1,897.50

Item	Special resolution types	Claimant
E	Legal service to claimant before decision notice	
	1 Where an insurer's decision on the existing entitlement to weekly payments is varied to the worker's benefit by an increase of 5% or more in weekly payments as a consequence of a legal service, where it was reasonable to carry out that service	Upper limit of \$1,391.50

Item	Special resolution types	Insurer
F	Written advice provided at the request of the insurer	
	1 Where— <ul style="list-style-type: none"> • the legal advice to an insurer is the provision of written advice at the request of the insurer before the issue of a decision notice, and • costs are not recoverable under Table 1 in relation to the claim or dispute the subject of that advice (Subject to clause 7 of Part 1)	Upper limit of \$1,043.65
G	Advice in relation to complying agreement	
	1 Where independent legal advice given to a claimant in relation to a complying agreement proposed by an insurer under section 66A of the 1987 Act (Subject to clause 7 of Part 1)	\$1,043.65

Table 4 Additional legal services or other factors

Item	Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
1	Appeal against an arbitral decision to Presidential member				
	Appeal resolved by decision of Presidential member	(a) Nil if unsuccessful	Upper limit of \$2,783.00	Upper limit of \$2,783.00	(a) Nil if unsuccessful
	Costs to be as ordered or certified by the Presidential member and may encompass all parties' costs	(b) Upper limit of \$2,783.00 if successful			(b) Upper limit of \$2,783.00 if successful
2	Question of law determined by the President				
	Matter resolved by the decision of the President	Upper limit of \$2,783.00	Upper limit of \$2,783.00	Upper limit of \$2,783.00	Upper limit of \$2,783.00
	Costs to be as ordered or certified by the President and may encompass all parties' costs				
3	Appeal against a medical assessment under Chapter 7, Part 7, of the 1998 Act				
	Appeal resolved by the decision of Appeal Panel	(a) Nil if result is not more favourable	Upper limit of \$1,391.50	Upper limit of \$1,391.50	(a) Nil if result is not more favourable
	Costs to be as ordered or certified by the Commission or the Registrar and may encompass all parties' costs	(b) Upper limit of \$1,391.50 if result is more favourable			(b) Upper limit of \$1,391.50 if result is more favourable
4	Dispute determined or otherwise resolved after proceedings have been commenced in the Commission				

Item	Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
	If— <ul style="list-style-type: none"> the Commission or the Registrar certifies the matter as complex, and neither item 6 nor 7 of this Table also applies 	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1
Item	Additional legal services or other factors	Column 1 Claimant		Column 2 Insurer	
5	Dispute determined or otherwise resolved after proceedings have been commenced in the Commission				
	If— <ul style="list-style-type: none"> the Commission or the Registrar certifies the matter as complex, and item 6 or 7 of this Table would otherwise have application 	Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1		Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1	
Item	Additional legal services or other factors	Claimant			
6	Costs associated with multiple respondents				
	If the claim or dispute is resolved by an award or settlement apportioned between more than one respondent Note. This allowance does not apply to a resolution that has an increase in fees under item 4 or 5 of this Table.	Percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table Note. The increase does not apply for each additional respondent. Accordingly, 30% is the maximum allowable increase notwithstanding the number of respondents.			
Item	Additional legal services or other factors	Insurer			
7	Costs associated with acting for lead scheme agent				

Item	Additional legal services or other factors	Insurer
	If the claim or dispute is resolved by a scheme agent on behalf of multiple scheme agents	(a) Lead scheme agent: percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table
	Note. This allowance does not apply to a resolution that has an increase in fees under item 4 or 5 of this Table.	(b) Other agents: no costs recoverable
		Note. The increase referred to in paragraph (a) does not apply for each additional scheme agent, and accordingly 30% is the maximum allowable increase notwithstanding the number of scheme agents who are parties to the resolution.

Schedule 2 **Amendment of Workers Compensation Act 1987 No 70**

Schedule 3 Earnings for purposes of weekly payments of compensation under Division 2 of Part 3

Insert after clause 9—

10 Effect of Commonwealth jobkeeper scheme

- (1) This clause applies to an injured worker who receives or has received jobkeeper scheme payments from an employer.
- (2) For the purposes of determining the *pre-injury average weekly earnings* of a worker who received jobkeeper scheme payments during the relevant earning period for the worker, for each week to which a jobkeeper scheme payment applies, the worker's earnings in the employment to which the payment relates are taken to be the amount of income the worker is entitled to receive for work performed in the employment in that week.
- (3) A jobkeeper scheme payment received by an injured worker after the date of injury is, for each week to which the jobkeeper scheme payment applies, taken to be part of the worker's actual gross earnings in relation to that week for the purposes of the definition of *current weekly earnings* in clause 8.
- (4) In this clause—
jobkeeper payment has the same meaning as it has in Part 6–4C of the *Fair Work Act 2009* of the Commonwealth.
jobkeeper scheme payment means a payment made to a worker by an employer in connection with jobkeeper payments that are paid or payable to the employer in relation to that worker.