



New South Wales

# Workers Compensation Transitional Regulation 1997

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*.

J. W. SHAW MLC

Minister for Industrial Relations

## Explanatory note

This Regulation provides for the following:

- (a) A transitional arrangement is provided for under which the compensation payable for injuries suffered by coal miners before 1 July 1997 will not be subject to amendments that provide for employment to be a substantial contributing factor to injury before compensation is payable, a 25% reduction in maximum lump sum compensation amounts, discontinuation of weekly payments of compensation after 2 years, and deductions for previous injuries and pre-existing conditions and abnormalities.
- (b) A transitional arrangement is provided for under which the application of a new provision that entitles coal miners to “top up” weekly payments of compensation for the first 78 weeks of incapacity for work will be varied in its application to injuries suffered before 1 July 1997 to take account of cases in which the date of incapacity is later than the date of injury.
- (c) A transitional arrangement is provided for under which the application of new provisions that require the medical certificate that accompanies a claim for weekly payments of compensation to state whether

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employment was a substantial contributing factor to the injury will not apply to claims made before 1 April 1997 (except claims for psychological injury).

- (d) Provision is made for transitional cases in which notice is not required to be given to an injured worker of intention to discontinue weekly payments of compensation under new section 52A of the Act (which provides for the discontinuation of weekly payments after the first 104 weeks of incapacity if the worker is fit for suitable duties and does not meet certain criteria related to return-to-work efforts). Under the provisions of the Act, discontinuation of payments under section 52A can generally only occur if the worker has been given notice (a payment discontinuation notice) 12 weeks before the time when the worker's payments or entitlements would total 104 weeks and the worker can only apply to the Compensation Court to determine a dispute in that regard if the application is made within that 12 week period of notice. The cases in which, under the transitional provision in the regulations, section 52A can apply (if the worker is in the category mentioned) without a payment discontinuation notice and the worker can apply to the Court at other times, are those where, firstly, proceedings are, as at the commencement of section 52A, pending before the Court in which the worker is claiming weekly compensation (for which liability has not previously been denied) for a period longer than 104 weeks or, secondly, proceedings are lodged after the commencement and the worker has already had or is claiming 104 weeks of payments arising from an injury before that commencement. However, the regulations will still allow workers compensation insurers in those cases to give the worker information similar to that contained in payment discontinuation notices.
- (e) A transitional regulation that related to the operation of a provision repealed by the *WorkCover Legislation Amendment Act 1996* is repealed.

These transitional provisions are consequent on the *WorkCover Legislation Amendment Act 1996*.

The *Workers Compensation Amendment Bill 1996* (which has been passed by the Legislative Council) contains provision that will authorise the making of regulations to modify amendments made by the *Workcover Legislation Amendment Act 1996* in their application to coal miners or to exempt coal

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miners from those amendments. That Bill is not intended to affect or prevent the making of transitional regulations (as indicated in the Minister's Second Reading speech for the Bill).

This Regulation is made under the *Workers Compensation Act 1987*, including clause 14 of Part 4 (Provisions relating to weekly payments of compensation), and Part 20 (Savings and transitional regulations) of Schedule 6 to that Act, and section 280 (the general regulation making power).

This Regulation deals with matters of a transitional nature.

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## Workers Compensation Transitional Regulation 1997

### 1 Name of Regulation

This Regulation is the *Workers Compensation Transitional Regulation 1997*.

### 2 Commencement

This Regulation commences on 12 January 1997.

### 3 Notes

The explanatory note and table of contents in this Regulation do not form part of this Regulation.

### 4 Definitions

In **this** Regulation:

*the Act* means the *Workers Compensation Act 1987*.

*the 1996 Amending Act* means the *WorkCover Legislation Amendment Act 1996*.

### 5 Coal miners

- (1) The amendments made to the Workers Compensation Act 1987 by the following provisions of the 1996 Amending Act do not apply in respect of an injury received before 1 July 1997 by a worker employed in or about a mine to which the Coal Mines Regulation Act 1982 applies:
  - (a) Schedule 1.2 (Employment required to be substantial contributing factor),
  - (b) Schedule 1.4 (Reduction in maximum lump sum compensation amounts),
  - (c) Schedule 1.5 (Discontinuation of weekly payments after 2 years),
  - (d) Schedule 1.6 (Deduction for previous injuries and pre-existing conditions and abnormalities).

- (2) Clause 1 (3) of Part 18 of Schedule 6 to the Act applies in respect of an injury received before 1 July 1997 as if the reference in paragraph (c) of that subclause to the period of 78 weeks after the date of the injury concerned were a reference to the first 78 weeks of incapacity for work (whether total or partial, or both) after the worker becomes (or became) entitled to weekly payments of compensation in respect of the incapacity resulting from the injury. Separate periods of incapacity resulting from the same injury are to be aggregated to determine the period of incapacity for work.

**6 Medical certificate accompanying weekly compensation claims**

Section 92 (1C) and (1D) of the Act do not apply in respect of a claim for compensation made before 1 April 1997, except a claim for weekly payments of compensation in respect of a psychological injury (within the meaning of section 11A of the Act).

**7 Discontinuation of weekly payments after 104 weeks—injuries before commencement of section 52A**

- (1) Section 52A of the Act applies without any payment discontinuation notice being given and the worker concerned may apply to the Compensation Court under section 52B (1) of the Act for a determination of any dispute about the operation of section 52A of the Act (even though no such notice has been given), in the following cases:
- (a) any case where court proceedings in respect of the weekly payments of compensation concerned are pending as at the commencement of section 52A of the Act (other than a case referred to in clause 14 (3) of Part 4 of Schedule 6 to the Act),
  - (b) any case where court proceedings are commenced after the commencement of section 52A of the Act, being proceedings that involve a claim for weekly payments of compensation in respect of a period of incapacity for work (resulting from an injury received before that commencement) that includes any period of incapacity beyond the first 104 weeks of incapacity referred to in section 52A (1) of the Act (as determined in accordance with clause 14 (2) (e) of Part 4 of Schedule 6 to the Act).

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- (2) This clause does not prevent the person on whom the claim has been made from giving the worker a notice informing the worker about the existence and effect of section 52A of the Act and alerting the worker to the application, or possible application, of that section to the worker. The giving of such a notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

### **8 Repeal of Workers Compensation (Transitional—Hearing Loss Claims) Regulation 1995**

*The Workers Compensation (Transitional – Hearing Loss Claims) Regulation 1995 is repealed.*