



New South Wales

Workers Compensation Amendment (Miscellaneous Provisions) Regulation 2006

under the

Workers Compensation Act 1987 and Workplace Injury
Management and Workers Compensation Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Commerce

Explanatory note

The objects of this Regulation are as follows:

- (a) to prescribe the period within which wage details must be provided to an injured worker for the purposes of the worker calculating his or her average weekly earnings (see Schedule 1 [1]),
- (b) to deal with the following matters that arise as a result of the amendments made to the *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act)* by Schedule 1.1 to the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*:
 - (i) modifying the details required to be included by insurers in a notice of intention to discontinue or reduce weekly payments, so that they are the same as those now required by the 1998 Act to be included in a notice that liability is disputed (see Schedule 1 [2] and [3]),
 - (ii) adding to the details required to be included by insurers in a notice that liability is disputed and omitting from the details that the regulations require to be included in such a notice those details that are now required by the 1998 Act (see Schedule 1 [4] and [5]),
 - (iii) restating the obligations on employers and insurers in possession of reports relating to an injured worker to provide the reports to the worker if liability is disputed, so as to ensure all relevant documents are served on a worker at the same time as serving a notice disputing a workers compensation claim and so as to prevent reports being used in proceedings unless they are disclosed prior

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- to the proceedings (see Schedule 1 [6], which inserts a provision in place of those omitted by Schedule 1 [6] and [8]),
- (iv) omitting a redundant provision relating to requirements in relation to examinations of workers at the direction of employers (as this matter is now to be dealt with by the WorkCover Guidelines) (see Schedule 1 [7]),
 - (v) removing the right of appeal against all orders, determinations, rulings and directions of an interlocutory nature of the Commission constituted by an Arbitrator, to a Presidential Member of the Workers Compensation Commission (see Schedule 1 [16]),
- (c) to make the following amendments in relation to restrictions on obtaining medical reports:
- (i) extending the operation of provisions imposing restrictions on obtaining medical reports to work injury damages threshold disputes as well as claims (see Schedule 1 [9], [10] and [12]),
 - (ii) limiting the medical reports that are admissible in proceedings to one report from the specialty treating the injured worker or, if no specialist has treated the worker, to one report from a specialist of a specialty relevant to the treatment of the worker's injury (see Schedule 1 [10]) and clarifying the application of that limitation to all medical reports of a medico-legal nature (see Schedule 1 [10], to the extent that it inserts proposed clause 43 (4)),
 - (iii) replacing the concept of permissible updates to medical reports with supplementary reports, which are admissible in prescribed circumstances (see Schedule 1 [11] and [13]),
 - (iv) clarifying the operation of a provision that imposes restrictions on the disclosure of medical reports to approved medical specialists, to make it clear that medical reports must be disclosed in the listed circumstances and must not be otherwise disclosed and extending it to work injury damages threshold disputes (see Schedule 1 [12]),
 - (v) clarifying the application of those restrictions to all medical reports of a medico-legal nature (see Schedule 1 [12], to the extent that it inserts proposed clause 43A (4)),
 - (vi) providing that a party to a claim or to proceedings on a claim is not entitled to be paid for or recover the cost of obtaining a medical report in connection with the claim unless the report has been admitted into those proceedings on behalf of the party or has been disclosed to an approved medical specialist (see Schedule 1 [14]),
 - (vii) making a transitional provision relating to the application of restrictions on obtaining medical reports and on the recovery of costs associated with medical reports (see Schedule 1 [15]).

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power) and the *Workplace Injury Management and Workers Compensation Act 1998* (as amended by the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*), including section 248 (the general regulation-making power).

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under the

Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998

1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Miscellaneous Provisions) Regulation 2006*.

2 Commencement

This Regulation commences on 1 November 2006.

3 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 14A

Insert after clause 14:

14A Computation of average weekly earnings

For the purposes of section 43 (2) of the 1987 Act, the period of 14 days is prescribed in relation to any request made on or after 1 November 2006.

[2] Clause 15 Notice of intention to discontinue or reduce weekly payments

Omit clause 15 (1). Insert instead:

- (1) The notice referred to in section 54 of the 1987 Act must include the following:
 - (a) a statement of the reason for the decision to discontinue payment, or reduce the amount, of weekly payments of compensation and of the issues relevant to the decision,
 - (b) a statement identifying all the reports and documents submitted by the worker in making the claim for weekly payment of compensation,
 - (c) a statement identifying all the reports of the type to which clause 37 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,
 - (d) a statement advising that a copy of a report required to be provided by the insurer under clause 37 (3) (except as provided by clause 37 (5) or (6)) accompanies the notice,
 - (e) a statement to the effect that the worker can request a review of the decision by the insurer,
 - (f) a statement to the effect that the matters that may be referred to the Commission or District Court are limited to matters specified as disputed in the notice, in a request for a further review of the decision or in a notice after a further review of the decision,
 - (g) advice as to the procedure for requesting a review of the decision,

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- (h) unless paragraph (i) applies, a statement to the effect that the worker can refer the dispute about the decision for determination by the Commission (in the case of a dispute about a matter other than a coal miner matter) or the District Court (in the case of a dispute about a coal miner matter),
 - (i) if the insurer has referred or proposes to refer the disputed discontinuation or reduction for determination by the Commission or District Court, a statement to that effect specifying the date of referral or proposed referral,
 - (j) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from a lawyer or from the WorkCover Claims Assistance Service,
 - (k) the street address and email address of the Registrar of the Commission or Registrar of the District Court, as appropriate.

[3] Clause 15 (3)

Omit the subclause.

[4] Clause 34 Notice of dispute about liability

Omit clause 34 (1). Insert instead:

- (1) The notice given to a claimant under section 74 of the 1998 Act must contain the following:
 - (a) in relation to a coal miner matter:
 - (i) a statement to the effect that the worker can refer the dispute for determination by the District Court, and
 - (ii) 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, and
 - (iii) 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,

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- (b) in relation to a work injury damages dispute:
 - (i) 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), and
 - (ii) 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 identifying all the reports of the type to which clause 37 applies that are relevant to the decision, whether or not the reports support the reasons for the decision,
- (e) a statement advising that a copy of a report required to be provided by the insurer under clause 37 (3) (except as provided by clause 37 (5) or (6)) accompanies the notice,
- (f) advice as to the procedure for requesting a review of the decision,
- (g) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, from a lawyer or from the WorkCover Claims Assistance Service,
- (h) the street address and the email address of the Registrar of the Commission or the Registrar of the District Court, as appropriate.

Note. Section 74 of the 1998 Act requires the notice to also include the following:

- (a) a statement of the reason the insurer disputes liability and of the issues relevant to the decision,
- (b) a statement to the effect that the worker can request a review of the claim by the insurer,
- (c) a statement to the effect that the worker can refer the dispute for determination by the Commission,
- (d) if the insurer has referred or proposes to refer the dispute for determination by the Commission, a statement to that effect specifying the date of referral or proposed referral,

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- (e) a statement to the effect that the matters that may be referred to the Commission are limited to matters notified in the notice, or in a notice after a further review or in correspondence prior to any such referral concerning an offer of settlement or in a request for a further review,
 - (f) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer.

[5] Clause 34 (4)

Omit the subclause.

[6] Clause 37

Omit the clause. Insert instead:

37 Access to certain medical reports and other reports obtained by insurer: sections 73 and 126 of 1998 Act

- (1) This clause applies to the following types of reports that an employer or insurer has in the employer's or insurer's possession:
 - (a) medical reports, including medical reports provided pursuant to section 119 of the 1998 Act (Medical examination of workers at direction of employer),
 - (b) medical certificates,
 - (c) clinical notes,
 - (d) investigators' reports,
 - (e) occupational rehabilitation providers' reports,
 - (f) health service providers' reports,
 - (g) reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act,
 - (h) reports obtained by or provided to an employer or insurer that contain information relevant to the claim on which a decision to dispute liability is made,
 - (i) wage details required to be supplied under section 43 (2) of the 1987 Act where a decision has been made to decline payment of, or reduce the amount of, weekly benefits, but only if such details have not already been supplied to the worker.

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- (2) This clause applies to the following decisions of an employer or insurer relating to an injured worker:
 - (a) a decision to dispute liability in respect of a claim, or any aspect of a claim (in circumstances requiring the insurer to give the worker a notice and reasons under section 74 of the 1998 Act),
 - (b) a decision to discontinue payment, or to reduce the amount of weekly benefits (in circumstances requiring the insurer to give the worker a notice of intention under section 54 of the 1987 Act),
 - (c) a decision on the review under section 287A of the 1998 Act of a decision described in paragraph (a) or (b) that confirms the original decision.
- (3) If an employer or insurer makes a decision to which this clause applies, the employer or insurer must provide a copy of any relevant report to which this clause applies to the worker, as an attachment to a notice under section 74 of the 1998 Act, section 54 of the 1987 Act or section 287A of the 1998 Act, as the case may be, except where the report has already been supplied to the worker and that report is identified in a statement under clause 15 (1) (c) or 34 (1) (d).
- (4) The obligation in this clause to provide a copy of a report applies to any report that is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision.
- (5) If the employer or insurer is of the opinion that supplying a worker with a copy of a report would pose a serious threat to the life or health of the worker or any other person, the employer or insurer may instead supply the report:
 - (a) in the case of a medical report, medical certificate or clinical notes—to a medical practitioner nominated by the worker for that purpose, or
 - (b) in any other case—to a legal practitioner representing the worker.
- (6) If, on the application of an employer or insurer, the Authority is satisfied that supplying the worker with a copy of the report would pose a serious threat to the life or health of the worker or any other person and that supplying the report as provided by this clause would not be appropriate, the Authority may:
 - (a) direct that the report be supplied to such other persons as the Authority considers appropriate, or

(b) make such other directions as the Authority thinks fit.

[7] Clause 39 Medical examination of worker at direction of employer

Omit the clause.

**[8] Clause 40 Access to medical opinion or report obtained by employer:
sec 119 of 1998 Act**

Omit the clause.

[9] Clause 42 Definitions

Insert in alphabetical order:

work injury damages threshold dispute means a dispute within the meaning of section 314 of the 1998 Act.

[10] Clause 43

Omit the clause. Insert instead:

43 Restrictions on number of medical reports that can be admitted

- (1) In any proceedings on a claim or a work injury damages threshold dispute in relation to an injured worker, only one forensic medical report may be admitted on behalf of a party to proceedings.
- (2) A report referred to in subclause (1) must be from a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury.
- (3) Where the injury has involved treatment by more than one specialist medical practitioner, with different qualifications, then an additional forensic medical report may be admitted from a medical practitioner with qualifications in that speciality.
- (4) In this clause:

forensic medical report:

 - (a) means a report from a specialist medical practitioner who has not treated the worker and has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of a claim or dispute, and
 - (b) includes a medical report provided by a specialist medical practitioner in respect of an examination of the injured worker pursuant to section 119 of the 1998 Act.

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[11] Clause 43AA

Insert after clause 43:

43AA Supplementary reports admissible

- (1) Despite clauses 43 and 43A, a medical report other than the original report (*a supplementary report*) may be admitted if:
 - (a) it has the purpose of clarifying the original report, for example, where it can be shown that there has been some omission in relation to the material originally provided that could lead to an opinion in the original report being expressed on the basis of inaccurate or incomplete information, and
 - (b) it does not go outside the parameters of the original report, but merely confirms, modifies or retracts an opinion expressed in the original report.
- (2) A supplementary report can be provided as an addendum to the original report and in such a case the original report together with that addendum constitute the report referred to in clauses 43 and 43A.
- (3) A supplementary report must have been provided by the medical practitioner who provided the original report except when the medical practitioner has ceased (permanently or temporarily) to practise in the specialty concerned, in which case the supplementary report must be provided by another medical practitioner of the same specialty.

[12] Clause 43A

Omit the clause. Insert instead:

43A Restriction on disclosure of forensic medical reports to approved medical specialists

- (1) A forensic medical report must be disclosed to an approved medical specialist in connection with a claim or a work injury damages threshold dispute if any of the following occurs:
 - (a) the report was admitted in proceedings on the claim or dispute,
 - (b) no decision has been made as to whether or not the report is to be admitted, and:
 - (i) the report was the report nominated by the claimant or respondent as the report that the claimant or respondent concerned would introduce into evidence in proceedings on the claim, or

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- (ii) the report was the sole report in the particular specialty concerned that was lodged in relation to the claim by the claimant or respondent, as the case may be,
 - (c) the approved medical specialist calls for the production of the report under section 324 (1) (b) of the 1998 Act.
 - (2) A forensic medical report is not to be disclosed to an approved medical specialist in connection with a claim or a work injury damages threshold dispute otherwise than in accordance with this clause.
 - (3) Nothing in this clause permits more than one forensic medical report of the type referred to in clause 43 to be disclosed to an approved medical specialist on behalf of a party to proceedings.
 - (4) In this clause:
 - approved medical specialist* has the same meaning as in section 319 of the 1998 Act.
 - forensic medical report*:
 - (a) means a report from a specialist who has not treated the worker and has been obtained for the purpose of proving or disproving an entitlement, or the extent of an entitlement, in respect of a claim or dispute, and
 - (b) includes a medical report provided by a medical practitioner in respect of an examination of the injured worker pursuant to section 119 of the 1998 Act.

[13] Clause 44 Permissible updates of medical reports

Omit the clause.

[14] Clause 45

Omit the clause. Insert instead:

45 Restrictions on recovery of cost of medical reports

- (1) A party to proceedings on a claim is not entitled to be paid for or recover the cost of a medical report in connection with the claim unless:
 - (a) the report has been admitted into those proceedings on behalf of the party, or
 - (b) the report has been disclosed to an approved medical specialist.

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- (2) A party to a claim where no proceedings have been taken is not entitled to be paid for or recover the cost of a medical report in connection with the claim unless the report has been served on another party, and:
 - (a) the report would be admissible in proceedings on behalf of the party, or
 - (b) the report could be disclosed to an approved medical specialist.
- (3) In this clause:
 - (a) a reference to a claim includes a reference to an initial notification of injury (as defined in Part 3 of Chapter 7 of the 1998 Act), and
 - (b) a reference to proceedings on a claim includes a reference to proceedings in respect of the payment of provisional weekly payments of compensation under the 1998 Act.
- (4) In this clause:

approved medical specialist has the same meaning as in section 319 of the 1998 Act.

[15] Clause 48A

Insert after clause 48:

48A Further transitional provision

- (1) In this clause:

the amending Regulation means the *Workers Compensation Amendment (Miscellaneous Provisions) Regulation 2006*.
- (2) The amendments made to this Part by the amending Regulation do not affect the use of a medical report in evidence in proceedings or as part of disclosure to an approved medical specialist where the report relates to an application lodged with the Registrar prior to 1 November 2006.
- (3) The amendments made to this Part by the amending Regulation apply to all claims or work injury damages threshold disputes lodged with the Registrar on and from 1 November 2006.
- (4) Despite subclause (3), where the medical examination to which the relevant medical report relates occurred before 1 November 2006, this Part, as in force immediately before 1 November 2006, continues to apply in respect of the report if the report:
 - (a) formed part of an application lodged with the Registrar prior to 1 December 2006, or

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- (b) formed part of a reply filed in respect of such an application within 21 days of the application being lodged.
 - (5) Despite subclause (3), clause 45, as in force immediately before 1 November 2006, applies in respect of a medical report where the medical examination to which the report relates occurred before 1 November 2006 and either:
 - (a) the claim to which the report relates was resolved on or after 1 November 2006 without referral to the Registrar for determination by the Commission, or
 - (b) the application to which the report relates, or referral of the dispute for determination by the Commission to which the report relates, was lodged with the Registrar before 1 December 2006, except where there was a discontinuance of proceedings (without the consent of both parties) on or after 1 November 2006.

[16] Clause 200B

Insert after clause 200A:

200B New claims procedures—appeal against decision of Commission constituted by Arbitrator

For the purposes of section 352 (8) of the 1998 Act, all preliminary or interim orders, determinations, rulings and directions of an interlocutory nature are prescribed.