

# Workers Compensation Regulation 2016

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## New regulation commences

The Workers Compensation Regulation 2016 (2016 Regulation) commences on 1 September 2016. The 2016 Regulation remakes, with minor amendments, the Workers Compensation Regulation 2010 (2010 Regulation).

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## Background

The 2010 Regulation is automatically repealed on 1 September 2016 under section 10 of the *Subordinate Legislation Act 1989*. Consequently, the Government decided to remake the 2010 Regulation with minor amendments.

The State Insurance Regulatory Authority (SIRA) undertook public consultation on the draft 2016 Regulation and its associated Regulatory Impact Statement from 13 May to 14 June 2016. SIRA received 12 written submissions from a range of stakeholders.

Following the public consultation, SIRA published a [consultation summary](#) that provides an overview of the main issues and views noted in stakeholder feedback and submissions.

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## Key changes

### Removal of option for employers to establish shared return to work programs

Clause 25 of the 2010 Regulation has been repealed to remove the option for category 2 employers<sup>1</sup> to establish shared return to work programs.

Category 2 employers will continue to have access to the standard return to work program via the SIRA website which they can customise for their workplace or develop their own return to work program, using the standard program as a guide. Category 2 employers are not required to submit a standard return to work program to SIRA for approval.

This amendment does not impact on an employer's ability to engage a shared return to work coordinator.

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<sup>1</sup> A category 2 employer is any employer who is not a category 1 employer. A category 1 employer is an employer with a basic tariff premium exceeding \$50,000 per annum; one who is self-insured; or, one who is insured by a specialised insurer and employs more than 20 workers. Category 1 employers do not enter into shared return to work programs as they are required to develop their own tailored programs.

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## Provisions related to the 2012 workers compensation legislative reforms

A number of clauses in the 2010 Regulation (clauses 6-10, 12, 13, 46(1) (g) and (i) and 180) referenced provisions in the *Workers Compensation Act 1987* (1987 Act) that were repealed or amended as part of the 2012 legislative reforms. Certain workers are exempt from the 2012 reforms (such as police officers, paramedics, fire fighters, volunteer bush fire fighters, emergency services volunteers, coal miners or those making a dust disease claim). Claims by exempt workers continue to be managed and administered as though the 2012 reforms had not occurred.

Clauses 6-10, 12, 13, 46(1) (g) and (i) and 180 of the 2010 Regulation have not been carried over into the 2016 Regulation. However, new clause 39 of Part 6 of Schedule 8 to the 2016 Regulation makes clear that they continue to apply to exempt workers.

## New clauses

During the remake process it was considered appropriate to insert two new clauses in the 2016 Regulation to give effect to a number of provisions in the 1987 Act and the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) that contain regulation-making powers. The new clauses are:

- Clause 173 – Applications for licenses
  - For the purposes of sections 177(2) and 210(2) of the 1987 Act, clause 173 prescribes that an application for a licence as an insurer or self-insurer is to be in the ‘approved form’. Clause 3 of the 2016 Regulation defines ‘approved form’ to mean a form approved by the Authority (SIRA).
- Clause 174 – Medical practitioner may be required to attend Commission
  - For the purposes of section 127(4) of the 1998 Act, clause 174 prescribes the process for notifying a medical practitioner that he or she is required to attend for cross-examination on the contents of a medical report in the Workers Compensation Commission. The notification can be provided by way of a notice served on the practitioner, or a summons issued under s. 359 of the 1998 Act.

## Amendments to Schedule 2

The 2016 Regulation contains an amended Schedule 2 relating to medical tests and results for brucellosis, leptospirosis and Q fever. The changes to columns 2 and 3 in Schedule 2 reflect the latest case definitions for brucellosis, leptospirosis and Q fever detailed in the *NSW Control Guidelines for Public Health Units* published by NSW Health.

## **Amendments to Schedule 5**

Three offences were removed from the table of offences that can be dealt with by way of penalty notice in Schedule 5. The offences were removed as they contain particular subjective elements (such as intention) that render them inappropriate for prosecution by way of a penalty notice.

The offences removed from Schedule 5 are:

- Section 163A(6) of the 1987 Act involving 'fraudulent' alteration of a certificate of currency
- Section 232(2)(b) of the 1998 Act involving supplying information 'known' to be false or misleading
- Section 238AA of the 1998 Act which, depending on the nature of the allegation, involves supplying information 'known' to be false or misleading, or refusing/failing to comply with a requirement under the section without a 'reasonable excuse'.

These offences remain in place but can no longer be dealt with by way of a penalty notice.

References to sections 79A(4); 80 (5); 81A (2); 82 (3); 90(7); 126(2); 343(4)(a) and 343(4)(b) of the 1998 Act were also removed from Part 2 of Schedule 5 as they were redundant.

## **Other minor amendments:**

- Alignment of the 2016 Regulation with recent legislative reforms to the workers compensation system.
- Updated references to legislative instruments.
- Removal of unnecessary and redundant clauses.
- Improvement and clarification of clauses where confusion had been identified.

## **Amendments made by reforms outside the scope of the remake**

The 2016 Regulation also incorporates amendments made to the 2010 Regulation during 2016 concerning the Market Practice and Premiums Guidelines (MPPGs) and Return to Work Assistance benefits. Due to their substantive and specialised nature, these amendments were progressed concurrently with, but separately to, the remake of the 2010 Regulation:

- The Workers Compensation Amendment (Return to Work Assistance) Regulation 2016 amended the 2010 Regulation to facilitate the return to work assistance benefits and commenced on 29 April 2016
- The 2010 Regulation was amended by the Workers Compensation Amendment (Premiums) Regulation 2016 to facilitate the commencement of the MPPGs from 4pm on 30 June 2016.

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## Further information

For a detailed list of the amendments to the 2016 Regulation, please [click here](#).

If you require further information please:

- email [wcreg2016@sira.nsw.gov.au](mailto:wcreg2016@sira.nsw.gov.au) or
- call the State Insurance Regulatory Authority (SIRA) Customer Service Centre on 13 10 50.

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