

1991—No. 497

WORKERS COMPENSATION ACT 1987—REGULATION

(Relating to insurance cases involving motor accidents)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Workers Compensation Act 1987, has been pleased to make the Regulation set forth hereunder.

J. J. FAHEY
Minister for Industrial Relations,
Minister for Further Education,
Training and Employment.

Commencement

1. This Regulation commences on 1 October 1991.

Amendment of Workers Compensation (General) Regulation 1987

2. The Workers Compensation (General) Regulation 1987 is amended by omitting from the third paragraph of Form 7 (Employer's Insurance Policy) in Schedule 1 the words "liability for damages in respect of a motor accident as defined in the Motor Accidents Act 1988 or".

Amendment of Workers Compensation (Insurance Premiums) Regulation 1987

3. The Workers Compensation (Insurance Premiums) Regulation 1987 is amended by inserting after clause 9 (2) the following subclause:

(2A) For the purpose of subclauses (1) and (2), in the case of a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the Motor Accidents Act 1988:

1991—No. 497

- (a) the insurer's liability to indemnify an employer in respect of the employer's liability to the claimant independently of the Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the Workers Compensation Act 1987 applied to the award of damages concerned; and
- (b) the insurer is taken not to be liable for legal costs connected with proceedings under the Motor Accidents Act 1988 if damages would not have been payable if that Division applied to that award.

EXPLANATORY NOTE

At present under the Workers Compensation (General) Regulation 1987, the prescribed form of workers compensation employer's insurance policy has the effect of excluding a workers Compensation insurer from liability for damages in respect of a work-related motor accident. The object of this Regulation (clause 2) is to allow "double insurance" contributions under general insurance law to operate so that a workers compensation insurer will be liable to contribute to the damages for such an accident.

The object of this Regulation also is to amend the Workers Compensation Insurance Premiums) Regulation 1987 (clause 3) to ensure that in calculating the premium payable by an employer under a workers compensation policy (in which cost of claims is a factor), an employer is not disadvantaged by the fact that the cost of his or her claims may be higher under the proposed double insurance arrangements related to work-related motor accidents. The situation arises because damages under the modified common law provisions of the Motor Accident Act 1988 may be higher than the damages under the modified common law provisions of the Workers Compensation Act 1987.
