



New South Wales

Workers Compensation Amendment (Consequential COVID-19 Matters) 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 object of this Regulation is to amend the *Workers Compensation Regulation 2016* as a consequence of the recent enactment of section 19B of the *Workers Compensation Act 1987*, which establishes presumptive rights to compensation under the Act in respect of COVID-19 for workers in certain prescribed employment. For the purposes of the Act, this Regulation—

- (a) prescribes medical tests for COVID-19 and the results of those tests that must be obtained, and the clinical criteria that must be satisfied, for a worker to be taken to have contracted COVID-19, and
- (b) modifies a provision of the Act to make the terminology used in the provision consistent with concepts used in a Part of the Act dealing with entitlements to weekly compensation, for the purposes of applying that Part to workers with COVID-19, and
- (c) provides for certain matters in relation to how the period of incapacity of a worker due to COVID-19 is to be established for the purposes of the Act, and
- (d) clarifies and makes more detailed provision for the way in which workers who have contracted COVID-19 but in relation to whom the presumption of entitlement to weekly compensation under section 19B is rebutted are to be dealt with under the Act, and
- (e) prescribes further types of employment as prescribed employment.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 19B and 280 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Consequential COVID-19 Matters) 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 5 Medical tests and results to determine whether brucellosis, Q fever or leptospirosis is work-related

Insert “Part 1 of” after “Column 3 of”.

[2] Clause 5

Omit “that Schedule” wherever occurring. Insert instead “that Part”.

[3] Clauses 5B–5D

Insert after clause 5A—

5B COVID-19—medical tests and results to determine if COVID-19 is work-related

- (1) For the purposes of section 19B(2) of the 1987 Act, a result set out in Column 3 of Part 2 of Schedule 2 in relation to COVID-19, if obtained by means of a medical test the requirements of which are set out opposite that result in Column 2 of that Part in relation to the disease, is a result prescribed in respect of the disease.
- (2) For the purposes of section 19B(3) of the 1987 Act, the clinical criteria prescribed for the purpose of making a classification of COVID-19 are the obtaining of a result prescribed under section 19B(2) of the 1987 Act in respect of the disease by means of a medical test that complies with the requirements prescribed under that subsection in relation to the disease.
- (3) A reference in Part 2 of Schedule 2 to the Australian Register of Therapeutic Goods is a reference to the register of that name maintained under the *Therapeutic Goods Act 1989* of the Commonwealth.

5C COVID-19—matters relating to incapacity

- (1) For the purposes of section 19B(5)(a) of the 1987 Act, the relevant date is the later of—
 - (a) the date that is 21 days after the date of the injury, or
 - (b) if a medical practitioner issues a certificate of capacity certifying that the worker still has COVID-19 on that date—the date that marks the end of the expected duration of the worker’s incapacity for work as a result of COVID-19 that is specified in the certificate.
- (2) Section 32A of the 1987 Act is modified by adding the following subsection at the end of the section—
 - (3) For the purposes of applying this Division to a worker referred to in section 19B(5), a reference in section 19B(5) to a worker being incapable of work is a reference to the worker having a total incapacity for work and no current work capacity.
- (3) Subclauses (4) and (5) apply—
 - (a) to a worker the subject of a presumption under section 19B(1) of the 1987 Act in relation to whom the presumption under section 19B(5) of the 1987 Act is rebutted (a *relevant worker*), and
 - (b) for the purposes of Division 2 of Part 3 of the 1987 Act.

- (4) To avoid doubt, section 33 of the 1987 Act applies to a relevant worker with a total or partial incapacity for work resulting from the worker's COVID-19 infection.
- (5) A relevant worker to whom section 33 of the 1987 Act does not otherwise apply is taken to be partially incapacitated for work and to have current work capacity as a result of COVID-19 during the worker's isolation period if the worker's actual gross weekly earnings from paid employment during that period are—
 - (a) less than the gross weekly amount that the worker had the capacity to earn in the worker's pre-injury employment immediately before the injury, or
 - (b) nil.
- (6) For the purposes of applying Division 2 of Part 3 of the 1987 Act to a relevant worker, the current weekly earnings of the worker in relation to a week are the worker's actual gross earnings in respect of that week, and clause 8 of Schedule 3 to the 1987 Act in its application to the worker is taken to be modified accordingly.
- (7) In this clause—

isolation period in relation to a worker means the period for which the worker is required by a medical practitioner to isolate following the worker's diagnosis of COVID-19.

5D COVID-19—prescribed employment

For the purposes of the definition of *prescribed employment* in section 19B(9) of the 1987 Act, employment in any of the following is prescribed—

- (a) cafes,
- (b) supermarkets,
- (c) funeral homes,
- (d) child care facilities.

[4] Schedule 2, heading

Omit “and leptospirosis”. Insert instead “, leptospirosis and COVID-19”.

[5] Schedule 2

Omit “Clause 5”. Insert instead “Clauses 5 and 5B”.

[6] Schedule 2, Part 1, heading

Insert before the table—

Part 1 Medical tests and results—brucellosis, Q fever and leptospirosis

[7] Schedule 2, Part 2

Insert at the end of the Schedule—

Part 2 Medical tests and results—COVID-19

Column 1	Column 2	Column 3
COVID-19	<p>Nucleic acid testing of any specimen using a specific SARS-CoV-2 nucleic acid test that is listed in the Australian Register of Therapeutic Goods</p> <p>A laboratory culture of any specimen, with confirmatory testing using a PCR test that is listed in the Australian Register of Therapeutic Goods</p>	<p>Detection of SARS-CoV-2</p> <p>The isolation of SARS-CoV-2, confirmed with PCR</p>