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”.


Insert before the table—

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


Insert at the end of the Schedule—
### Part 2  Medical tests and results—COVID-19

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>COVID-19</td>
<td>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</td>
<td>Detection of SARS-CoV-2</td>
</tr>
<tr>
<td></td>
<td>A laboratory culture of any specimen, with confirmatory testing using a PCR test that is listed in the Australian Register of Therapeutic Goods</td>
<td>The isolation of SARS-CoV-2, confirmed with PCR</td>
</tr>
</tbody>
</table>