

Regulatory Impact Statement and Better Regulation Statement

*Draft Workers Compensation
Regulation 2016*

May 2016



SIRA
State Insurance
Regulatory Authority

Contents

Introduction	5
Purpose of this Regulatory Impact Statement	5
Better regulation principles	6
How to make a submission	7
Background	8
The NSW workers compensation system	8
State Insurance Regulatory Authority (SIRA)	8
The Workers Compensation Regulation 2010	9
Need for government action	10
Objectives of government action	11
Analysis of options	12
Option 1: Take no action – allow the 2010 Regulation to lapse	12
Option 2: Maintain the status quo – remake the 2010 Regulation with no amendments	13
Option 3: Remake the 2010 Regulation with amendments (the preferred option)	14
The preferred option – remaking the 2010 Regulation with amendments	15
Type of amendments: Machinery and Policy	15
Proposed machinery amendments	15
Proposed policy amendment	17
List of amendments	18
Current reform projects outside the scope of this Regulatory Impact Statement	25
Consultation	26
Abbreviations and acronyms	27

Title of Regulatory Proposal: *Workers Compensation Regulation 2016*

Proponent: State Insurance Regulatory Authority

Responsible Minister: The Hon. Victor Dominello
Minister for Innovation and Better Regulation

Relevant Acts: *Workers Compensation Act 1987*
Workplace Injury Management and Workers Compensation Act 1998

Introduction

Purpose of this Regulatory Impact Statement

The Workers Compensation Regulation 2010 (2010 Regulation) is subject to automatic repeal by the operation of section 10 of the *Subordinate Legislation Act 1989* (SL Act) on 1 September 2016, and will lapse unless remade or a postponement of repeal is obtained.

The SL Act automatically repeals regulations five years after they are made. The automatic repeal can be postponed a maximum of five times. If a Regulation is not remade at the time of the staged repeal, the Regulation is repealed and no longer exists.

The 2010 Regulation commenced on 1 February 2011 and its staged repeal provides an opportunity to improve the Regulation, ensuring its provisions appropriately support the workers compensation legislation.

The purpose of this Regulatory Impact Statement is to provide interested parties and stakeholders with a detailed analysis of the options being considered during the staged repeal of the 2010 Regulation prior to 1 September 2016.

This Regulatory Impact Statement supports the proposal to remake the 2010 Regulation with minor revision, and that the remade regulation will replace the 2010 Regulation on 1 September 2016.

Under section 5 of the SL Act, the State Insurance Regulatory Authority (SIRA), on behalf of the Minister for Innovation and Better Regulation, is required to prepare and publish a Regulatory Impact Statement when a principal Regulation is made, or when a Regulation is to be remade under the staged repeal program. A Regulatory Impact Statement must:

- state the need for, and objectives of, government action
- identify and consider alternative options to meet the objectives
- assess the economic and social costs and benefits of each alternative option
- recommend the option that produces the greatest net benefit to the community
- explain the consultation process.

Better regulation principles

All regulatory proposals must adhere to the NSW Government's commitment to making better regulation. All government agencies are required to explain why a proposed regulation is required, and whether it is reasonable and responsive to the economic, social and environmental needs of business and the community. The NSW Government has developed seven better regulation principles, which must be applied to all regulatory proposals. The seven principles are:

1. the need for government action should be established
2. the objective of government action should be clear
3. the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
4. government action should be effective and proportional
5. consultation with business and the community should inform regulatory development
6. the simplification, repeal, reform or consolidation of existing regulation should be considered
7. regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

The NSW Government requires all government agencies to prepare a Better Regulation Statement for significant new and amending regulatory proposals. The Better Regulation Statement explains how the better regulation principles have been applied when developing the regulatory proposal. A Regulatory Impact Statement can be used in place of a Better Regulation Statement to provide a more comprehensive impact analysis. The Better Regulation Statement for the draft Workers Compensation Regulation 2016 (draft 2016 Regulation) is incorporated within this Regulatory Impact Statement.

How to make a submission

Public notice of the commencement of consultation on the draft 2016 Regulation and this Regulatory Impact Statement has appeared in the *NSW Government Gazette*, the *Sydney Morning Herald* and *The Daily Telegraph*.

Copies of this Regulatory Impact Statement and the draft 2016 Regulation are available from the 'Have Your Say' page of the SIRA website www.sira.nsw.gov.au, and from the NSW Government 'Have Your Say' website www.haveyoursay.nsw.gov.au/consultations. Copies can also be requested by emailing requests to wcreg2016@sira.nsw.gov.au.

SIRA welcomes comment and feedback from all stakeholders. The preferred format for providing a submission on the draft 2016 Regulation is via a written submission.

Submissions should be emailed to:

wcreg2016@sira.nsw.gov.au

or by post to:

Consultation - 2016 Regulation
Policy & Design
Workers and Home Building Compensation Regulation
State Insurance Regulatory Authority
Locked Bag 2906
Lisarow NSW 2252

The closing date for written submissions is 5pm on **Tuesday 14 June 2016**.

Publication of submissions

Following processing, submissions may be published on the SIRA website. Copyright in submissions resides with the author(s), not with SIRA. Please indicate if you do not want your submission or any part(s) of it published on the SIRA website.

Publication of submissions will usually include your name and the name of the organisation, if relevant. SIRA will remove contact details such as email addresses, postal addresses and telephone numbers. At its discretion, SIRA may not publish certain submissions (or part of submissions) due to its assessment of length, content, appropriateness or confidentiality.

Background

The NSW workers compensation system

The NSW workers compensation system operates under three Acts, the *Workers Compensation Act 1987* (1987 Act), the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) and the *State Insurance and Care Governance Act 2015* (SICG Act). The objectives of the NSW workers compensation laws are to provide a regulatory framework for the provision of compensation, treatment and return to work assistance for workers injured as a result of their employment.

The objectives of the workers compensation system are set out in Section 3 of the 1998 Act. In summary, they are:

- securing workers' health, safety and welfare while preventing work-related injury
- providing prompt treatment and rehabilitation to assist injured workers to return to work
- providing income and treatment payments to injured workers and their dependants
- providing a fair, affordable and financially viable system
- delivering an efficient and effective system.

State Insurance Regulatory Authority (SIRA)

In 2015, legislative reforms introduced by the SICG Act made significant changes to governance arrangements for workers compensation and work, health and safety.

The reforms dissolved the former WorkCover Authority and created three new entities which commenced operation on 1 September 2015:

- State Insurance Regulatory Authority (SIRA) – independent insurance regulator
- Insurance & Care NSW (icare) – insurance and care service provider
- SafeWork NSW – independent workplace safety regulator.

SIRA is responsible for the regulatory functions in relation to workers compensation insurance, motor accidents compulsory third party insurance and home building compensation.

The objectives of SIRA are set out in the SICG Act. The principle objectives of SIRA (regarding workers compensation) in section 23 of the SICG Act are to:

- promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation legislation and the other Acts under which SIRA exercises functions
- minimise the cost to the community of workplace injuries and to minimise the risks associated with such injuries

- promote workplace injury prevention, effective injury management and return to work measures and programs
- ensure that persons injured in the workplace have access to treatment that will assist with their recovery
- provide for the effective supervision of claims handling and disputes under the workers compensation legislation
- promote compliance with the workers compensation legislation.

Under section 24 of the SICG Act, the functions of SIRA regarding workers compensation are to:

- collect and analyse information on prudential matters in relation to insurers under the workers compensation legislation
- encourage and promote the carrying out of sound prudential practices by insurers under that legislation
- evaluate the effectiveness and carrying out of those practices.

Section 24 also notes that SIRA has such functions as are conferred or imposed on it by or under any other Act, including the workers compensation legislation.

The Workers Compensation Regulation 2010

The 2010 Regulation includes machinery and administrative provisions detailing how to implement and administer the workers compensation legislation in order to provide the most effective and efficient outcomes for a range of matters that support the workers compensation system.

In order to put into effect the objectives of the workers compensation legislation, a number of matters are prescribed in the 2010 Regulation. For example, the 2010 Regulation prescribes:

- the 'latest index number' for the purpose of indexing workers compensation benefits
- certain diseases as compensable diseases
- the required method for determining particular classes of workers' wages
- the requirements for return to work programs
- the procedure for the notification of workplace injuries.

In addition, the 2010 Regulation establishes a number of operational procedures and processes that put into effect the provisions of the legislation. For example, the legislation delegates power to the 2010 Regulation to prescribe:

- the schedule by which an employer is to pay premiums by instalments
- how a workplace rehabilitation provider is to gain approval and remain approved to operate within the workers compensation system.

The 2010 Regulation establishes maximum costs for certain activities that are paid for under the workers compensation system and describes the types of behaviour by providers that are prohibited by the legislation, such as certain types of advertising.

It also deals with a range of procedural matters, and compliance and offence mechanisms that deter non-compliance with workers compensation laws.

Need for government action

The NSW workers compensation system provides protection to workers and employers in the event of a work related injury or disease. This is currently achieved through a regulatory framework that consists of legislation and a Regulation that provides details on how to implement the legislation.

Government action is deemed necessary at this point in time as the 2010 Regulation is due for automatic repeal on 1 September 2016. The 2010 Regulation is a necessary and detailed component of the workers compensation regulatory framework in NSW, and forms a critical link between the Acts and monitoring compliance. That is, the Acts cannot function as intended without the supporting Regulation.

As part of the automatic repeal process, SIRA has identified the need to remake the 2010 Regulation with amendments, in order to continue to deliver an effective and efficient compliance and regulatory framework. The draft 2016 Regulation:

- includes a policy amendment to remove the option for employers to establish shared return to work programs
- updates Schedule 2 relating to medical tests and results of brucellosis, Q fever and leptospirosis to reflect the latest case definitions from the *NSW Control Guidelines for Public Health Units*
- updates certain provisions to reflect recent changes to the workers compensation legislation
- updates references to legislative instruments
- removes unnecessary and redundant clauses
- improves and clarifies clauses where confusion has been identified.

Failing to remake the 2010 Regulation will mean these matters are not addressed and therefore impair the efficient operation of the legislation. There would be considerable uncertainty for employers in paying their premiums and the actions they need to take with regard to a worker who has suffered an injury at work. Further, there would be inconsistency with the treatment and services provided to injured workers and the likelihood of poor financial performance of the workers compensation system should certain costs be uninhibited.

Objectives of government action

The objective of government action is to ensure that the workers compensation system, as legislated, functions effectively. Having a clear set of rules for implementing the legislation will ensure that the outcomes and objectives of the workers compensation legislation may be more efficiently and easily achieved.

The proposed action will ensure that the workers compensation regulatory framework remains efficient and effective, delivering necessary services and ensuring positive outcomes for injured workers, as well as providing employers with appropriate and well-functioning workers compensation insurance.

By remaking the 2010 Regulation with the proposed amendments, the NSW Government aims to ensure there is continuity in the operational aspects of the workers compensation system, and that system participants continue to benefit from its effect. Making amendments that go to improving the functionality and effectiveness of the workers compensation system ensure it remains flexible and adaptable.

Analysis of options

SIRA has identified, considered and evaluated three options to achieve the NSW Government's objectives and meet the requirements of the SL Act. The options are:

1. Take no action - allow the 2010 Regulation to lapse
2. Maintain the status quo - remake the 2010 Regulation with no amendments
3. Improve the current Regulation - remake the 2010 Regulation with amendments.

Option 1: Take no action – allow the 2010 Regulation to lapse

This option would mean the government did not take any action with regard to the automatic repeal of the 2010 Regulation. That is, the 2010 Regulation would be allowed to lapse and its provisions would no longer have any operational effect.

The 2010 Regulation enables the objectives of the workers compensation Acts to be met by providing for essential administrative and operational procedures. The 2010 Regulation provides clarity for workers, employers, insurers, service providers and other system participants with regard to what activities are required to operate within the NSW workers compensation system.

The workers compensation Acts require the remaking of the 2010 Regulation to put into operational effect many of their provisions; therefore the legislation needs to be supported by Regulation in prescribing the administrative and machinery processes required for a well-functioning workers compensation system. Placing workers compensation administrative and machinery processes in a Regulation results in a framework that is transparent and certain, but also adaptable to the needs of workers, employers, insurers and other system participants.

Allowing the automatic repeal of the 2010 Regulation would result in either the need to legislate for administrative and operational matters, or allow these matters to remain unregulated. Requiring Parliament to consider and debate administrative and operational matters would be cumbersome and time consuming, resulting in a system that was inflexible and difficult to change.

While the legislation provides some Guideline making powers, many of the matters covered by the 2010 Regulation cannot be included in a Guideline. Allowing these matters to remain unregulated would force many businesses, insurers and providers to incur unnecessary additional expense in seeking advice on how to comply with the workers compensation legislation. Further, it would provide an unacceptable risk to the administration of the workers compensation system that could threaten its fairness, affordability and viability.

Benefits

An analysis of the potential costs and benefits of this option clearly demonstrates that it is not feasible. No benefit was identified in allowing the 2010 Regulation to lapse.

Costs

The identified costs for this option include:

- high administrative burden and risk associated with having to go to Parliament to amend administrative provisions held within legislation
- considerable administrative costs associated with replacing the Regulation with Guidelines and a loss of enforcement capacity
- the risk of not being able to put into effect legislative provisions that provide clarity and certainty for employers and insurers thereby inhibiting the full and proper effect of the legislation
- greater compliance costs for employers seeking to understand their compliance requirements
- greater enforcement costs for SIRA.

This option would either lead to a systematic failure or it would require significant amendments to the two workers compensation Acts. It is not the preferred option.

Option 2: Maintain the status quo – remake the 2010 Regulation with no amendments

Remaking the 2010 Regulation with no amendments would maintain the current regulatory framework for the workers compensation system in NSW. This option will allow all the provisions in the current 2010 Regulation to continue for another five-year period.

Benefits

The benefits of remaking the current 2010 Regulation without amendment are that it maintains the current operational and regulatory framework, and is administratively the most convenient option to implement. It would provide consistency for stakeholders. However, it would not include any of the improvements or clarifying amendments that have been identified as necessary (see option 3).

Costs

The costs of this option include maintenance of:

- a regulatory framework that is inconsistent with the recent legislative reforms to the workers compensation system
- a Regulation that includes out-dated:
 - references to legislative instruments
 - test and result case definitions for brucellosis, Q fever and leptospirosis.
- unnecessary and redundant clauses.

Remaking the 2010 Regulation without amendment would also mean that the proposed policy change to streamline the requirements for the establishment of return to work programs would not be addressed.

This is not the preferred option.

Option 3: Remake the 2010 Regulation with amendments (the preferred option)

This option involves remaking the 2010 Regulation with minor amendments as the Workers Compensation Regulation 2016. The draft 2016 Regulation will maintain the existing regulatory framework and processes as well as introducing some amendments to improve and update it. This option allows the provisions in the current 2010 Regulation, with the amendments outlined in this Regulatory Impact Statement, to continue for another five-year period.

The preferred option is to remake the 2010 Regulation with amendments. The draft 2016 Regulation includes the following proposed amendments:

- a policy change removing the option for employers to establish shared return to work programs
- updating Schedule 2 relating to medical tests and results of brucellosis, Q fever and leptospirosis to reflect the latest case definitions from the *NSW Control Guidelines for Public Health Units*
- changes to align the Regulation with recent legislative reforms to the workers compensation system
- updating references to legislative instruments
- removing unnecessary and redundant clauses
- improving and clarifying clauses where confusion has been identified.

Remaking the 2010 Regulation with the proposed amendments maintains the existing regulatory framework but also updates and improves certain regulatory processes. This option ensures the objectives of the workers compensation legislation continue to be met in an efficient and cost effective way.

While all amendments are considered under the cost benefit analysis framework, only policy amendments that have, or may have, material impact on any stakeholders have been considered for evaluation. Machinery changes, therefore, are not considered to have material impact on any stakeholder.

The preferred option – remaking the 2010 Regulation with amendments

Type of amendments: Machinery and policy

The proposed amendments for inclusion in the draft 2016 Regulation are categorised as machinery or policy changes.

Machinery clauses – support the policy intentions of the Regulation.

Policy clauses – outline the policy intent of the NSW Government and the government agency. These clauses are essential elements of a regulatory model, and any changes to existing policy clauses, or policy intent of the Regulation, must be outlined and explained in the Regulatory Impact Statement.

Proposed machinery amendments

A list of the proposed policy and machinery amendments is set out in Table 3 at the end of this chapter. In addition, a discussion on the significant machinery amendments is provided below.

Amendments to Schedule 2 in the proposed 2016 Regulation

Schedule 2 to the 2010 Regulation prescribes the medical tests and results necessary to determine whether the infectious diseases, brucellosis, leptospirosis and Q fever, are work-related. The number of reported workers compensation claims for brucellosis, leptospirosis and Q fever in NSW from 1 July 2010 to December 2015 are listed in Table 1.

Table 1: Number of reported claims for brucellosis, leptospirosis and Q fever

Disease	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16*	Total
Brucellosis	1	0	0	2	0	0	3
Leptospirosis	2	4	2	1	4	1	14
Q Fever	12	8	4	11	18	11	64

*As at December 2015

The draft 2016 Regulation contains an amended Schedule 2 relating to medical tests and results for brucellosis, leptospirosis and Q fever. The changes updating column 2 (medical tests) and column 3 (results) were provided and confirmed by the Communicable Diseases Branch within Health Protection NSW, which is a specialist health service of NSW Health. Health Protection NSW is responsible for surveillance and public health response in NSW including monitoring the incidence of notifiable infectious diseases and taking appropriate action to control the spread of diseases.

The changes to columns 2 and 3 in Schedule 2 to the draft 2016 Regulation 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^{1 2 3}. The case definitions provide specific details on current best practice regarding laboratory and clinical evidence to confirm cases of brucellosis, leptospirosis and Q fever.

In addition, the *NSW Control Guidelines for Public Health Units* align with the *Surveillance Case definitions for the Australian National Notifiable Disease Surveillance System* developed by the Communicable Diseases Network Australia (CDNA) and published by the Australian Government Department of Health⁴. The CDNA (of which, NSW is a member) was established in 1989 as a joint initiative of the National Health and Medical Research Council and Australian Health Ministers' Advisory Council. The Communicable Diseases Network Australia provides national public health co-ordination and leadership, and supports best practice for the prevention and control of communicable diseases.

Provisions related to the 2012 and 2015 workers compensation legislative reforms

A number of clauses in the 2010 Regulation (clauses 6-10, 12, 13, 46(1) (g) and (i) and 180) reference weekly payments provisions in the 1987 Act that were repealed as part of the 2012 legislative reforms. Certain workers are exempt from the 2012 reforms (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 never occurred. The repealed provisions in the 1987 Act that continue to apply to exempt workers are preserved by Part 19H of Schedule 6 to the 1987 Act.

These clauses have not been carried over into the draft 2016 Regulation. However, they are preserved by new clause 38 of Part 5 of Schedule 8 to the draft 2016 Regulation to enable them to continue to apply to exempt workers.

In addition, in order to reflect the changes to the workers compensation system made by the 2012 and 2015 legislative reforms to the 1987 Act and the 1998 Act a number of other clauses in the 2010 Regulation have not been carried over into the draft 2016 Regulation. These clauses are redundant and refer to provisions that were repealed by the reforms.

References to legislative instruments

The draft 2016 Regulation includes amendments to:

- update references to the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* which were repealed in 2015. These have been replaced with the equivalent references to the *Legal Profession Uniform Law (NSW)* (LPUL) and associated legislation which commenced operation on 1 July 2015. While the legislation implementing the LPUL in 2015 incorporated a number of changes to the principal workers compensation Acts to reflect the new regime, it did not update references to the new legal profession framework in the 2010 Regulation. The update has also replaced all references to 'legal practitioner' with 'law practice', consistent with the LPUL.
- references to other legislative instruments that have been repealed and replaced with new legislative instruments since the 2010 Regulation was made. These include replacing references to the:
 - repealed 'Motor Accidents Compensation Regulation 2005' with references to the 'Motor Accidents Compensation Regulation 2015'
 - repealed *Freedom of Information Act 1989 (NSW)* with a reference to the *Government Information (Public Access) Act 2009*.

1 NSW Health, *NSW Control Guidelines for Public Health Units – Brucellosis*, retrieved on 16 March 2016 from www.health.nsw.gov.au/Infectious/controlguideline/Pages/brucellosis.aspx, last updated on 1 July 2012.

2 NSW Health, *NSW Control Guidelines for Public Health Units – Leptospirosis*, retrieved on 16 March 2016 from www.health.nsw.gov.au/Infectious/controlguideline/Pages/leptospirosis.aspx, last updated on 1 July 2012.

3 NSW Health, *NSW Control Guidelines for Public Health Units – Q fever*, retrieved on 16 March 2016 from www.health.nsw.gov.au/Infectious/controlguideline/Pages/qfever.aspx last updated on 1 July 2012.

4 Australian Government Department of Health, *Surveillance Case definitions for the Australian National Notifiable Disease Surveillance System*, retrieved 16 March 2016 from www.health.gov.au/internet/main/publishing.nsf/Content/cdna-casedefinitions.htm, last updated 22 January 2016.

Benefits and costs of machinery amendments

There are no economically quantifiable benefits or costs with removing redundant clauses or replacing out of date references. The qualitative benefits arise through the removal of pages of regulation and having a streamlined, effective and efficient regulation that is aligned with current legislation, standards and practices.

Proposed policy amendment

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

Table 2: Proposed policy amendment

2010 Provision	2016 Provision	Proposed amendment
Clause 25: Shared return to work programs	Clause repealed	Repeal clause 25 of the 2010 Regulation to remove option for employers to establish shared return to work programs.

A return to work program consists of the formal policy and procedures that an employer must have in place to help injured workers with their recovery and return to the workplace. The program must be developed within 12 months of becoming an employer and be done in consultation with the employer's workers and any industrial union representing those workers.

For a category one employer (being: 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) a return to work program must be developed in accordance with the guidelines for workplace return to work programs.

Currently, a category two employer (any employer who is not a category one employer as described above), has two options for establishing a return to work program. The first option is to utilise the standard return to work program template issued by SIRA and the second option is for two or more employers to establish a single shared return to work program. Clause 25 of the 2010 Regulation provides for employers to enter into shared return to work programs, if approved by SIRA.

In practice, Category 2 employers utilise the standard return to work program developed by SIRA. No employers currently have an approved shared return to work program and SIRA has not received any applications from employers to approve shared return to work programs in the last five years. Category 1 employers do not enter into shared return to work programs as they are required to develop their own tailored programs.

In light of this, it is proposed to repeal clause 25 of the 2010 Regulation to remove the option for employers to establish shared return to work programs.

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

Benefits

Category 2 employers constitute 97 per cent of workers compensation policy holders in NSW.

Removal of this option will have minimal impact because Category 2 employers, in accordance with current practice, are able to easily access the standard return to work program, via the SIRA website, as a simpler, more cost effective and efficient method for developing and establishing their own return to work program.

Employers can complete the standard program without the need to engage and pay a consultant to

assist with its completion. In addition, all SafeWork NSW inspectors can provide copies of the standard return to work program and provide assistance to employers to complete the program template in order for employers to fulfil their legislative obligation. Employers are not required to submit a standard return to work program to SIRA for approval.

Where the standard return to work program is used for a single employer it can be focused on their individual workplace, whereas a shared program has to take into consideration the diverse requirements of all workplaces, workers and employers in the shared program.

The proposed amendment also has cost savings for SIRA and reduces administrative burden as SIRA will no longer need to have administrative processes in place to review and approve shared return to work programs.

Costs

There are no costs associated with this proposed amendment as the shared return to work program option is not used by any employers and SIRA has not received any applications from employers to approve shared return to work programs in the last five years.

List of amendments

Table 3 outlines the amendments contained in the draft 2016 Regulation.

Table 3: List of amendments

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 1	Clause 1	Name of Regulation changed to Workers Compensation Regulation 2016.
Clause 2	Clause 2	2016 Regulation commences 1 September 2016.
Part 3	Part 3	Part 3 title amended: 'Current weekly wage rate' changed to 'Pre-injury average weekly earnings'.
Clauses 6–10	N/A	These clauses have been removed from the draft 2016 Regulation. However, new clause 38 of Part 5 of Schedule 8 of the draft 2016 Regulation allows for these clauses to continue to have effect for certain workers.
Clause 10A	Clause 7	<ul style="list-style-type: none"> ■ Title amended: 'Prescribed number of hours – calculation of PIAWE' changed to 'Minimum number of hours each week'. ■ The wording of the provision has been simplified.
Clause 10B	Clause 6	Title amended: 'Minimum amount of PIAWE' changed to 'Minimum amount of pre-injury average weekly earnings'. Sentence restructured.
Part 5 Clauses 12–13	N/A	These clauses have been removed from the draft 2016 Regulation. However, new clause 38 of Part 5 of Schedule 8 of the draft 2016 Regulation allows for these clauses to continue to have effect for certain workers.
Part 6	Part 5	Title amended: 'Return-to-work programs' changed to 'Return-to-work programs under the 1998 Act'.
Clause 17	Clause 11	Clause 11(2) wording simplified.
Clause 25	N/A	Clause repealed. This amendment is discussed in the 'policy amendment' section of this Regulatory Impact Statement.
Clause 36	Clause 29	Simplified wording.

⁵ Please note the clause numbers in this column align with the version of the 2010 Regulation in force as at 1 April 2016.

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 42	Clause 35	Amended sub-clause (1)(a)(ii) to replace the second reference to 'employer' with 'worker'.
Clause 43	Clause 36	<ul style="list-style-type: none"> ■ Amended subclause (1)(g): 'Workers Compensation Claims Assistance Service' changed to 'any relevant service established by the Authority'. ■ Removed subclause 43(3) - redundant.
Clause 46	Clause 39	<ul style="list-style-type: none"> ■ Subclauses (1)(g) and (i) have been removed. However, new clause 38 of Part 5 of Schedule 8 of the draft 2016 Regulation allows for these subclauses to continue to have effect for certain workers. ■ Subclauses (1)(b) and (5)(a) - removed references to 'medical certificate' and replaced with 'certificate of capacity'. ■ Old subclause 46(3) was removed as it referred to a clause of the Regulation that has been repealed - redundant. ■ Sub-clause 39(3), has been made an offence provision with specified penalty units. See also reference to this provision at Schedule 5 below). ■ Subclause (5)(b) - removed reference to 'legal practitioner' and replaced with 'law practice'.
Clause 47	Clause 40	Title amended - removed '...sec297 of 1998 Act'.
Clause 51	Clause 44	Sub-clause (4) - definition of 'approved medical specialist' removed as the term is defined within the 1998 Act.
Clause 52	Clause 45	Sub-clause (4) - definition of 'approved medical specialist' removed as the term is defined within the 1998 Act.
Clause 56	Clause 49	Subclause 56(2) of the 2010 Regulation which referred to policies issued or renewed so as to take effect before 31 December 1995 removed - redundant.
Clause 57	Clause 50	Title amended - removed '...section 160 of the 1987 Act'.
Clause 59	Clause 52	Subclause 59(2) of the 2010 Regulation removed - redundant.
Clause 61	Clause 54	Title amended - removed '...section 175D of the 1987 Act'.
Clause 63	Clause 56	Amended subclause (1) - removed reference to section 57 of the 1998 Act. Section 57 of the 1998 Act was repealed as part of the 2012 legislative reforms.
Part 12	Part 11	Title amended: removed 'WorkCover Authority Fund' and replaced with 'Workers Compensation Operational Fund'. The name change was introduced by the <i>State Insurance and Care Governance Act 2015</i> .
Clause 69	Clause 62	Removed subclause (3) - redundant.
Clause 77	Clause 70	Subclause (c) - updated the persons declared to be authorised officers.
Part 16, Division 1 Preliminary	Part 15 Division 1 Preliminary	Amended Note - removed reference to 'legal practitioner' and replaced with 'law practice'.
Clause 78	Clause 71	Added definition of 'practitioner directory'.
Clause 81	Clause 73	Subclause (2) - moved definition of 'practitioner directory' to Clause 71 of the 2016 Regulation.
Clause 90	Clause 80	Subclause (2) - moved definition of 'practitioner directory' to Clause 71 of the 2016 Regulation.

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 94	Clause 83	Amended Note : <ul style="list-style-type: none"> Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law Application Act 2014</i>. Amended wording to clarify that expressions used in Division 1 of Part 8 of Chapter 7 of the 1998 Act have the same meanings as terms used in the legal costs legislation.
Clause 95	Clause 84	Title amended – removed ‘...section 332 of the 1998 Act’.
Clause 96	Clause 85	Amended Note : <ul style="list-style-type: none"> Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. Removed reference to ‘WorkCover Authority’ and replaced with ‘Authority’.
Clause 97	Clause 86	Reference to ‘legal practitioner’ in clause note, changed to ‘law practice’.
Subdivision 2	Subdivision 2	Title amended – removed reference to ‘legal practitioners’ and replaced with ‘law practices’.
Clause 98	Clause 87	<ul style="list-style-type: none"> Removed references to ‘legal practitioner’ and replaced with ‘law practice’. Amended Note : <ul style="list-style-type: none"> Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. Amended wording to align with the wording used in Division 3 of Part 4.3 of the <i>Legal Profession Uniform Law (NSW)</i>.
Clause 100	Clause 89	Amended sub-clause (2) to clarify wording and remove ambiguity.
Subdivision 1	Subdivision 1	Title amended – removed reference to ‘legal practitioners’ and replaced with ‘law practices’.
Clause 101	Clause 90	Amended Note – removed reference to ‘legal practitioner’ and replaced with ‘law practice’.
Clause 102	Clause 91	<ul style="list-style-type: none"> Removed references to ‘legal practitioner’ and replaced with ‘law practice’. Amended Note : <ul style="list-style-type: none"> Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. Amended wording to align with the wording used in Division 3 of Part 4.3 of the <i>Legal Profession Uniform Law (NSW)</i>.
Clause 103	Clause 92	<ul style="list-style-type: none"> Subclause (1) – removed reference to ‘legal practitioner’ and replaced with ‘law practice’. Amended sub-clause (1)(a) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>.
Clause 110	Clause 99	<ul style="list-style-type: none"> Amended definition of ‘client’ – removed reference to ‘legal practitioner’ and replaced with ‘law practice’. Amended definition of legal bill of costs – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>.

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 111	Clause 100	<ul style="list-style-type: none"> ■ Title amended – removed reference to ‘practitioner’ and replaced with ‘practice’. ■ Removed reference to ‘legal practitioner’ and replaced with ‘law practice’. ■ Removed Note as it referred to section 343 of the 1998 Act which has been repealed.
Clauses 112 and 113	Clause 101 and 102	<ul style="list-style-type: none"> ■ Titles amended – removed references to ‘practitioner’ and replaced with ‘practice’. ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’.
Clauses 116–118	Clauses 105–107	<ul style="list-style-type: none"> ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’.
Clause 119	Clause 108	<ul style="list-style-type: none"> ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’. ■ Amended subclause (3)(a) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>.
Subdivision 2	Subdivision 2	<ul style="list-style-type: none"> ■ Title amended – removed reference to ‘practitioner’ and replaced with ‘law practice’.
Clause 121	Clause 110	<ul style="list-style-type: none"> ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’. ■ Amended subclause (4) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. ■ Amended Note – Removed paragraph relating to section 343 of the 1998 Act. Section 343 has been repealed in the 1998 Act.
Clause 122	Clause 111	<ul style="list-style-type: none"> ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’. ■ Amended subclause (b) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. This clause notes that the terms ‘Legal Practice Rules’ and ‘Legal Professional Conduct Rules’ have the same meaning as in the Legal Profession Uniform Law (NSW).
Clause 123	Clause 112	<ul style="list-style-type: none"> ■ Removed reference to ‘legal practitioner’ and replaced with ‘law practice’. ■ Amended subclauses (1)(a) and (4) – removed references to <i>Legal Profession Act 2004</i> and replaced with references to <i>Legal Profession Uniform Law (NSW)</i>.
Clause 124	Clause 113	<ul style="list-style-type: none"> ■ Removed reference to ‘legal practitioner’ and replaced with ‘law practice’. ■ Amended subclause (2) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>.
Clause 125	Clause 114	Amended subclauses (1) and (2) – removed references to <i>Legal Profession Act 2004</i> and replaced with references to <i>Legal Profession Uniform Law (NSW)</i> .
Clause 127	Clause 116	Removed reference to ‘legal practitioner’ and replaced with ‘law practice’.

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 132	Clause 121	Amended sub-clause (1) – removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i> .
Clause 135	Clause 124	Simplified wording for sub-clause (5).
Clause 137	Clause 126	<ul style="list-style-type: none"> ■ Title amended – removed reference to ‘legal practitioner’ and replaced with ‘law practice’. ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice’.
Clause 138	Clause 127	<ul style="list-style-type: none"> ■ Removed references to ‘legal practitioner’ and replaced with ‘law practice or lawyer’. ■ Amended subclauses (1) and (2) – removed references to <i>Legal Profession Act 2004</i> and replaced with references to <i>Legal Profession Uniform Law (NSW)</i>. ■ Amended subclause (1) and (3) – removed reference to ‘Legal Services Commissioner’ and replaced with ‘designated local regulatory authority’. This amendment aligns with the meaning in the <i>Legal Profession Uniform Law (NSW)</i>.
Clause 139	Clause 128	<ul style="list-style-type: none"> ■ Removed subclause 139 (2) – redundant. ■ Subclause 139(3) – removed references to the <i>New Tax System Price Exploitation Law</i>, the <i>Price Exploration Code (NSW) Act 1999</i> and <i>Part VB of the Trade Practices Act 1974 (Cth)</i> – redundant.
Clause 140	Clause 129	<ul style="list-style-type: none"> ■ Title amended: ‘Modifications to <i>Legal Profession Act 2004</i> relating to assessment of costs’ changed to ‘Modifications to <i>Legal Profession Uniform Law (NSW)</i> relating to assessment of costs’. ■ Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>.
Clause 141	Clause 130	Removed reference to <i>Legal Profession Act 2004</i> and replaced with reference to <i>Legal Profession Uniform Law Application Act 2014</i> .
Clause 147	Clause 136	Delete redundant sub-clause 3(A).
Clause 162	Clause 151	Title amended: ‘Answer’ changed to ‘Representations in relation to applications’. The change of title clarifies the intent of the clause.
Clause 171	Clause 160	Amended subclause (4) – corrected clause reference. Removed reference to clause 162(1) and replaced with reference to clause 136(1).
Clause 177	Clause 166	Amended subclause (1)(b)(iii) (B) – moved to new subclause (iv).
Clause 180	Clause 170	Amended: <ul style="list-style-type: none"> ■ Subclause 180(a) – removed reference to section 40A of the 1987 Act which was repealed as part of the 2012 legislative reforms, and section 83 of the 1987 Act which was amended as part of the 2015 legislative reforms. ■ Subclause 180(b) – removed reference to s38A of the 1987 Act which was repealed as part of the 2012 legislative reforms. ■ Subclause 180(c) – replaced references to ‘section 142B(2) of the 1987 Act’ with ‘section 142B(1) of the 1987 Act’. ■ New clause 38 of Schedule 8 of the draft 2016 Regulation allows for clause 180 as it appeared in the 2010 Regulation to continue to have effect for certain workers.
Clause 185	Clause 176	Amended to prescribe the repeal of the 2010 Regulation.

2010 Provision ⁵	2016 Provision	Proposed amendment
Clause 186	N/A	Saving and transitional provision moved to Schedule 8, Part 5, clause 38 of the draft 2016 Regulation.
Schedule 2	Schedule 2	Amended Schedule 2 concerning medical tests and results of brucellosis, Q fever and leptospirosis to reflect the latest case definitions from the <i>NSW Control Guidelines for Public Health Units</i> for those conditions.
Schedule 3	Schedule 3	Amended Part 3 clause 20(b) – removed reference to ‘medical certificate’ and replaced with ‘certificate of capacity’.
Schedule 5	Schedule 5	<p>Amended Schedule 5 – penalty notice offences:</p> <ul style="list-style-type: none"> ■ Part 2 – removed references to sections 79A(4); 80 (5); 81A (2); 82 (3); 90(7); 343(4)(a) and 343(4)(b) of the 1998 Act. These sections have been repealed. ■ Part 2 - removed reference to section 126(2) of the 1998 Act, as this is not an offence provision. An equivalent offence has been created at clause 39(3) of the 2016 Regulation added to Part 3 of Schedule 5. ■ Part 3 -Title amended – removed ‘Provisions of the Workers Compensation Regulation 2010’ and replaced with ‘Provisions of the Workers Compensation Regulation 2016’.
Schedule 6	Schedule 6	<p>Amended Schedule 6 – maximum costs – compensation matters:</p> <ul style="list-style-type: none"> ■ Part 1, subclauses 1(2) & 16(2) – removed references to ‘legal practitioner’ and replaced with ‘law practice’. ■ Part 1, subclause 2(1) – removed definition of ‘legal practitioner’ and replaced with definition of ‘law practice’. ■ Part 1, subclause 1(6) – removed reference to ‘Legal Profession Regulation 2005’ and replaced with reference to <i>Legal Profession Uniform Law (NSW)</i>. ■ Part 1, subclause 6(1)(b)(i) – removed reference to <i>WorkCover Guidelines</i> and replaced with reference to the <i>NSW workers compensation guidelines for the evaluation of permanent impairment</i>. ■ Part 1, clause 15 – removed reference to ‘Motor Accidents Compensation Regulation 2005’ and replaced with reference to the ‘Motor Accidents Compensation Regulation 2015’. ■ Part 1, subclause 17(a) – removed reference to ‘Roads and Traffic Authority’ and replaced with ‘Roads and Maritime Services’. ■ Part 1, subclause 17(d) – removed reference to the <i>Freedom of Information Act 1989 (NSW)</i> and replaced with reference to the <i>Government Information (Public Access) Act 2009</i>. ■ Part 1, removed clause 18 (Costs unreasonably incurred) as it referred to section 342 of the 1998 Act which was repealed as part of the 2012 legislative reforms. ■ Part 2, Table 3, D 1 – Removed reference to ‘WorkCover’ and replaced with ‘Authority’. ■ Part 3, Item 1, Applicable provisions column – removed reference to ‘Motor Accidents Compensation Regulation 2005’ and replaced with reference to ‘Motor Accidents Compensation Regulation 2015’. <p>Part 3, Item 5:</p> <ul style="list-style-type: none"> ■ Removed reference to <i>WorkCover Guidelines</i> and replaced with reference to the <i>NSW workers compensation guidelines for the evaluation of permanent impairment</i>. ■ Updated references to clause numbers.

2010 Provision ⁵	2016 Provision	Proposed amendment
Schedule 7	Schedule 7	Removed all references to 'legal practitioner' and replaced with 'law practice'.
Schedule 8	Schedule 8	<p>Part 1:</p> <ul style="list-style-type: none"> ■ Removed references to 'seriously injured worker/s' and replaced with references to 'worker/s with highest needs'. ■ Removed clauses 7, 9 and 17 of Part 1 of the Schedule 8 of the 2010 Regulation - redundant. ■ Amended wording to clause 14 to make its effect clearer. <p>New Part 5:</p> <ul style="list-style-type: none"> ■ New clause 38 - Saving and transitional provision. ■ Sub-clause 38(2) provides for clauses 6-10, Part 5, clauses 46(1)(g) and (i) and 180 of the 2010 Regulation (which have been removed from the draft 2016 Regulation) to continue to have effect for certain workers.

Current reform projects outside the scope of this Regulatory Impact Statement

As a result of the 2015 workers compensation reforms there are a number of current reform projects that may result in amendments to the 2010 Regulation. Due to their substantive and specialised nature, these projects are being progressed concurrently with, but separately to, the remake of the 2010 Regulation. Each project has issued a separate discussion paper for public consultation and any amendments to the 2010 Regulation will be undertaken independently of the remake and this Regulatory Impact Statement. The relevant projects are:

- **Market Practice and Premiums Guidelines** – The SICG Act introduced amendments to repeal SIRA’s power to issue an insurance premiums order (IPO) and replace it with a power to issue the Market Practice and Premiums Guidelines (MPPGs). These guidelines will be used to implement a new mechanism for workers compensation premium setting. The 2010 Regulation currently incorporates a number of provisions relating to IPOs and implementation of the MPPGs will require amendment to these provisions. A discussion paper annexing draft MPPGs was issued by SIRA for public consultation on 16 March 2016. Following consultation, the proposed amendments were approved by the Minister and Executive Council. The necessary amendments to the 2010 Regulation to facilitate the MPPGs will be published in May 2016.
- **Review of pre-injury average weekly earnings (PIAWE)** – A worker’s entitlement to weekly payments of compensation is calculated on the basis of the worker’s pre-injury average weekly earnings (PIAWE). The 2015 amendments to the 1987 Act included a new power to vary aspects of the PIAWE calculation by way of regulation. In February 2016, SIRA issued a discussion paper seeking feedback from stakeholders on how the PIAWE calculation could be improved. It is anticipated that reforms to the 2010 Regulation resulting from consultation will be progressed in advance of the remake.
- **Reforms to legal costs in relation to reviews of work capacity decisions** – Currently legal practitioners are not entitled to receive payment for legal services provided in connection with review of a work capacity decision. The 2015 amendments to the 1987 Act included provisions allowing the Regulation to provide for legal practitioners to obtain costs in relation to reviews of work capacity decisions. In October 2015, SIRA issued a discussion paper seeking feedback from stakeholders as to how the new legal costs framework should operate. It is anticipated that amendments to the Regulation establishing this framework will be progressed in advance of the remake.
- **Regulation of return to work assistance** – The 2015 amendments to the 1987 Act also included a regulation making power in relation to pre-injury employers providing assistance to enable injured workers to return to work with a new employer, and, assisting eligible workers with the cost of training or education as part of their return to work strategy. Consultation on the new benefit was undertaken and the proposed amendments to the 2010 Regulation were approved by the Minister and Executive Council. The amendments to the 2010 Regulation to facilitate the return to work assistance benefits commenced on 29 April 2016.

Consultation

A key requirement of the regulatory development process, as outlined in the seven better regulation principles, is consultation with relevant stakeholders, including workers, employers, unions, professional groups, insurers and the NSW community.

This Regulatory Impact Statement is an essential element of the consultative process for the draft 2016 Regulation, and invites written submissions from all external stakeholders.

Notification of the commencement of public consultation on the draft 2016 Regulation and this Regulatory Impact Statement has been published in the *NSW Government Gazette*, the *Sydney Morning Herald* and *The Daily Telegraph* in accordance with section 5 of the SL Act.

The following organisations have been invited to provide written submissions:

- Australian Industry Group
- Australian Lawyers Alliance
- Australian Rehabilitation Providers Association
- Catholic Church Insurance
- Coal Services
- Guild Insurance
- Hospitality Employers Mutual Limited
- Injured Workers Support Network
- Insurance and Care NSW
- Law Society of NSW
- NSW Bar Association
- NSW Business Chamber
- NSW Self insurance Corporation
- NSW Self-Insurers Association
- Racing NSW
- State Cover Mutual Limited
- Unions NSW
- Workers Compensation Commission
- Workers Compensation Independent Review Office.

Abbreviations and acronyms

1987 Act	<i>Workers Compensation Act 1987</i>
1998 Act	<i>Workplace Injury Management and Workers Compensation Act 1998</i>
SICG Act	<i>State Insurance and Care Governance Act 2015</i>
2010 Regulation	Workers Compensation Regulation 2010
draft 2016 Regulation	draft Workers Compensation Regulation 2016
SIRA	State Insurance Regulatory Authority
SL Act	Subordinate Legislation Act 1989



SIRA
State Insurance
Regulatory Authority

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