

Australian Capital Territory

Workers Compensation Amendment Regulation 2022 (No 1)

Subordinate law SL2022–4

made under the

***Workers Compensation Act 1951*, section 223 (Regulation-making powers)**

EXPLANATORY STATEMENT

PURPOSE AND OUTLINE

The purpose of this Regulation is to amend the *Workers Compensation Regulation 2002* (the WC Regulation) to align with the licensing framework that commenced under the *Workers Compensation Act 1951* (WC Act) from 9 January 2021.

Workers' compensation insurers and self-insurers that were approved/exempted to operate prior to 9 January 2021 were extended to 31 December 2021 under the *Workers Compensation Amendment Regulation 2020* (No 1) [SL2020-40] and again until 31 May 2022 under the *Workers Compensation Amendment Regulation 2021* (No 1) [SL2021–29] as licensees under the WC Act. This was to allow time for the supporting instruments for the new licensing framework to be made.

The licensing framework aims to better align the ACT's requirements with other more contemporary licensing schemes and ensures workers can have the same service delivery expectations for workers' compensation matters regardless of whether their employer is insured by an insurer or self-insured.

These amendments support the required licensing framework to align with the new requirements under the WC Act and provide for the licensing application process, criteria for issuing a licence, conditions that may be imposed on a licence, and record-keeping requirements.

CONSISTENCY WITH HUMAN RIGHTS

These amendments do not engage the *Human Rights Act 2004* (HR Act).

Workers Compensation Amendment Regulation 2022 (No 1)

CLAUSE NOTES

Clause 1 Name of Regulation

This clause provides that the name of the regulation is the *Workers Compensation Amendment Regulation 2022 (No 1)*.

Clause 2 Commencement

This regulation (other than clauses 6, 8, 11 and 15) commences on the day after this regulation's notification day.

Clauses 6, 8, 11 and 15 of this regulation commence on 1 June 2022.

The split commencement of the regulation is to facilitate the receipt, consideration and issuing of insurer and self-insurer applications under the new licensing framework, with associated conditions for new licenses that are granted to apply from the start of any new licenses issued for the period commencing 1 June 2022.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Workers Compensation Regulation 2002*.

Clause 4 Section 3, note 1

This technical amendment replaces an example dictionary reference.

Clause 5 Division 9.1

The substantive amendments in this clause facilitate the licensing framework for insurers as set out under the *Workers Compensation Act 1951* (WC Act) and replace the interim measures put in place as part of the transitional arrangements.

The commencement date of this division of the regulation allows insurers to apply for new licences and the regulator to assess applications prior to the existing licence expiry date of 31 May 2022.

Division 9.1 – Licensing of licensed insurers

Section 68 makes amendments to set out the new application requirements for insurers to apply to become licensed in the ACT and comply with their obligations under the WC Act. Requirements have been streamlined to reduce the regulatory burden of application requirements where existing evidence is sufficient to support

the financial, prudential and governance of an insurer to carry on business as a workers' compensation insurer. It includes requirements for applicants to:

- provide proof of their authorisation under the *Insurance Act 1973* (Cwlth) to carry on an insurance business in Australia;
- details of any corresponding licences or applications;
- evidence of sufficient reinsurance to cover future liability; and
- comply with relevant protocols.

Section 69 sets out the criteria for issuing an insurer licence and is unchanged from the previous regulation.

Section 70 provides for the particulars of what an insurer licence must state and is unchanged from the previous regulation.

Clause 6 Divisions 9.2 and 9.3

Amendments under this clause are largely technical in nature to improve readability. The later commencement date for these divisions allows for previous licence conditions to remain in place until expiry on 31 May 2022.

Division 9.2 – Conditions on insurers

Section 71 is added and provides that insurers must maintain reinsurance that meets all existing and expected liabilities under the Act.

Section 72 provides that an insurer must, upon request, provide particular information to the regulator when deemed reasonably necessary, including information about claims made and information to assess the insurer's ability to meet their licence conditions. This section makes technical amendments only and combines the previous sections 72 and 73 to improve readability.

Section 73 makes minor technical amendments to the audit requirements previously set out under the regulations and would require insurers to pay reasonable fees and expenses associated with a compliance or financial audit.

Section 74 provides for the licence condition allowing the regulator to request relevant information from insurers on how premiums are calculated and is unchanged from the previous regulation.

Section 75 sets out the principles for insurers to set premiums and is unchanged from the previous regulation.

Section 76 specifies timeframes that insurers must provide information requested by the regulator. Only minor formatting amendments have been made to this section to improve readability.

Section 77 is a new clause and provides that insurers must maintain records relating to their policies, processes and decisions, in accordance with any approved protocols, for a period of at least 5 years. This is in support of the regulator conducting compliance activities.

Section 78 provides that an insurer must provide for alternative rehabilitation providers if the responsible rehabilitation provider's approval is suspended or revoked. This clause is unchanged from the previous regulation.

Division 9.3 – Action against insurers

Section 79 provides for the regulator's available actions (other than cancellation) if an insurer fails to meet their licence conditions or otherwise contravenes the WC Act. It makes minor amendments from the previous regulation by removing an insurer's failure to maintain a place of business in the ACT as a reason for action against them. This requirement is now situated in the associated *Workers Compensation (Insurer Licence Application) Protocol 2022*. Other minor technical amendments have been made to improve readability but is otherwise unchanged.

Section 80 sets out the regulator's processes for actions other than cancelling an insurer licence and has minor technical amendments only.

Section 81 sets out the regulator's process for cancelling an insurer's licence. It makes technical amendments only to improve readability.

Section 82 sets out the effects of the regulator cancelling or suspending an insurer's licence. It makes technical amendments only to improve readability.

Section 83 sets out when compulsory insurance policies cease to be compulsory insurance policies following the cancellation of an insurer licence and is unchanged from the previous regulation.

Clause 7 Division 10.1

The substantive amendments in this clause facilitate the licensing framework for self-insurers as set out under the *Workers Compensation Act 1951* (WC Act) and replace the interim measures put in place as part of the transitional arrangements.

The commencement date of this division of the regulation allows self-insurers to apply for new licences and the regulator to assess applications prior to the existing licence expiry date of 31 May 2022.

Division 10.1 – Issue of self-insurer licence by regulator

Section 84A makes consequential amendments to align with the new licensing framework and streamlines the process to reduce burden on both applicants and the regulation.

This section sets out the application specifications for a self-insurer licence. It requires applications to include:

- evidence of, or application for, any relevant corresponding self-insurer licences, including any conditions imposed on the licence
- evidence of unlimited reinsurance single event to cover the self-insurer's existing and expected liabilities (increased from \$500 000)
- a copy of the applicant's annual report and balance sheet (or equivalent) for each of the previous 3 years
- an actuarial report outlining existing and expected liabilities and total expected payments likely to be made each year
- a guarantee from an approved deposit-taking institution in favour of the Default Insurance Fund for the guaranteed amount of the greater of \$1,000,000 (increased from \$750 000) and the amount calculated by an actuary to be the estimated outstanding claims liability, plus a prudential margin of 50 per cent (increased from 30 per cent)
- evidence that an occupational health and safety management system complying with a relevant Australian or New Zealand standard is in place; and
- any other information as set out in an approved protocol.

It also provides that the regulator may request further information from applicants to verify their applications.

The requirement to evidence compliance with Australian or New Zealand standards is consistent with existing requirements. As part of the self-insurer licence application requirements, its application is limited to circumstances where established medium to large companies choose to apply to become a self-insurer.

Section 84B sets out the criteria for issuing a self-insurer licence and is unchanged from the previous regulation.

Clause 8 Divisions 10.2 and 10.3

Amendments under this clause are largely technical in nature to improve readability. The later commencement date for these divisions allows for previous licence conditions to remain in place until expiry on 31 May 2022.

Division 10.2 – Self-insurer licence conditions

Section 85 is a new clause and provides that licensed self-insurers must maintain unlimited reinsurance.

Section 86 sets out self-insurers' information sharing requirements relating to workers compensation, rehabilitation and occupational health and safety. Only minor technical amendments have been made to improve readability.

Section 87 is a new clause and provides that self-insurers must maintain records relating to their policies, processes and decisions, in accordance with any approved protocols, for a period of at least 5 years. This is in support of the regulator conducting compliance activities.

Section 88 provides that a self-insurer must provide for alternative rehabilitation providers if the responsible rehabilitation provider's approval is suspended or revoked. This clause is unchanged from the previous regulation.

Section 89 makes minor amendments only to the audit requirements previously set out under the regulations. It provides that self-insurers undergoing an audit under part 10A of the Regulations must comply with reasonable requirements made by the auditor, allow the auditor reasonable access to required information and pay reasonable associated fees and expenses.

Section 90 is a new clause and provides that self-insurers must maintain the bank guarantee as set out under the licence application specifications in section 84A.

Section 91 is a new clause and provides that self-insurers must maintain the compliant occupational health and safety system as set out under the licence application specifications in section 84.

Division 10.3 – Action against licensed self-insurers

Section 92 provides for the regulator's requirements in providing notice to a self-insurer that actions are proposed against their licence and makes only technical amendments to improve readability.

Section 93 provides for the regulator's available actions (other than cancellation) if an insurer fails to meet their licence conditions or otherwise contravenes the WC Act. It makes minor amendments for improved readability only.

Section 94 sets out the regulator's processes for cancelling a self-insurer licence and has minor technical amendments only to improve readability.

Section 95 sets out the effects of the regulator cancelling or suspending a self-insurer's licence. It makes technical amendments only to improve readability.

Clause 9 Section 95A heading

This clause renames 'Compliance and financial audits' to 'Compliance audits'.

Clause 10 Section 95A (1) (a) and (b), except note

This clause removes references to an insurer or employer applying to become a licenced insurer or self-insurer being subject to audit requirements. Audit requirements under part 10A only apply to licensed insurers and licensed self-insurers.

Clause 11 Section 95A (2), note

This clause is technical in nature to update referencing.

Clause 12 Section 95A (3)

This clause removes references to an insurer or employer applying to become a licenced insurer or self-insurer being subject to audit requirements. Audit requirements under part 10A only apply to licensed insurers and licensed self-insurers. It also inserts a definition of compliance auditor to replace a reference to the regulation's dictionary.

Clause 13 Section 95B heading

This clause renames 'Compliance and financial audits' to 'Financial audits'.

Clause 14 Section 95B (1) (a) and (b)

This clause removes references to an insurer or employer applying to become a licenced insurer or self-insurer being subject to audit requirements. Audit requirements under part 10A only apply to licensed insurers and licensed self-insurers.

Clause 15 Section 95B (2), note

This clause is technical in nature to update referencing.

Clause 16 Section 95B (3)

This clause inserts a definition of financial auditor to replace a reference to the regulation's dictionary.

Clause 17 Section 95C

This clause makes technical amendments only to improve readability.

Clause 18 Section 101 heading

This clause makes technical amendments only to insert a reference to the WC Act.

Clause 19 Section 101 (2) (b) and (c)

This clause makes technical amendments only to improve readability.

Clause 20 Dictionary, note 2

This clause makes technical amendments to define additional terms included under the *Legislation Act*.

Clause 21 Dictionary, note 3

This clause makes technical amendments to define additional terms as per the meanings under the WC Act.

Clause 22 Dictionary, new definition of *audit*

This clause makes a technical amendment to define *audit* as per the meanings set out under part 10A.

Clause 23 Dictionary, definitions

This clause omits a number of definitions from the dictionary.