

NSW Workers Compensation Act 1987 Employer's Insurance Policy

Part 1 Preliminary

1. Definitions

In this policy:

"Employer" means the person insured under this Policy, being the person named as the Employer in the Schedule of Employer Particulars.

"Insurer" means the insurer of the Employer under this Policy, being the person named as the Insurer in the Schedule of Employer Particulars.

"Period of insurance" means the period specified in the Schedule of Employer Particulars as the period during which this Policy is in force, and any subsequent period in respect of which this Policy is duly renewed.

"The Act" means the Workers Compensation Act 1987 and includes the Workplace Injury Management and Workers Compensation Act 1998.

"The Proposal" means the proposal for insurance in respect of which this Policy is issued (made by the Employer to the Insurer).

"Schedule of Employer Particulars" means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of this Policy.

"Worker" has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act).

2. Proposal and Schedule form part of Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of this Policy.

Part 2 Cover provided by Policy

3. What the Insurer is liable for

The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance:

- a. Compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the Act),
- b. Any other amount that the Employer becomes liable to pay independently of the Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue),

- c. Costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceeding in which any such liability is alleged,
- d. The insurer will not indemnify the Employer for the Employer's liability for GST payable on the settlement of a claim.

4. Businesses and industrial activities to which Policy applies

This Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the businesses or industrial activities to which the policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for the policy is to be adjusted in accordance with any change in the businesses or industrial activities to which the policy applies.

5. Insurer is directly liable to workers

The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under the Policy. This means that a claim can be made and action taken directly against the Insurer.

6. Insurer is bound by judgments etc. against Employer

The Insurer is bound by and subject to any judgment, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under the Policy.

7. Premium Adjustment

The premium for this Policy is adjusted at the end of each period of insurance based on the actual wages paid and incurred claims cost.

Part 3 Conditions of Policy

8. Employer must give Insurer notice of injury to worker

The Employer must notify the Insurer within 48 hours after becoming aware that a worker has received a workplace injury.

9. How notices are to be given

- (1) Notices to be given under the policy to the Insurer are to be given by being delivered, posted or transmitted electronically to the address of the Insurer last notified to the person giving the notice.
- (2) Notices to be given under the policy to the Employer are to be given by being delivered, posted or transmitted electronically to the address of the Employer last known to the Insurer.
- (3) The notification of injury required by clause 8 is to be given to the Insurer in the manner required by subclause (1) or in such other manner as the Insurer indicates to the Employer that the Insurer will accept.

10. Employer not to make admissions etc.

The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

11. Defence of proceedings

The Insurer can use the name of the Employer in respect of anything indemnified under the policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

12. Subrogation

The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by the policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

13. Precautions to prevent injury

The Employer must take all reasonable precautions to prevent injury.

14. Alterations and repairs following injury

So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

15. Insurer's right of inspection

The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

16. Assignment

An assignment of interest under the policy does not bind the Insurer unless the written consent of the Insurer to the assignment has been obtained.

17. Renewal of Policy

The policy is renewed on the expiration of the current period of insurance to which it applies, except where:

- a) the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required; or
- b) the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy.

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

If at any time the employer has failed to furnish the returns relating to wages (not later than 2 months after the renewal date of a policy as per clause 130 (1) of the *Workers Compensation Regulation 2003*), the insurer will automatically renew the policy in accordance with this clause by multiplying the wages for the immediately preceding equivalent period of insurance by 1.3.

18. Cancellation of Policy

The Insurer may cancel the policy at any time. The Insurer cancels the policy by giving notice of cancellation in writing to the Employer. The cancellation takes effect on the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer. Section 184 of the Act applies as if the Policy had been cancelled under that section.

No waiver or alteration

A provision of the policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on the policy.

19. Employer must tell the Insurer if unable to give suitable work requested by injured worker

If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following:

- a) the fact of the worker's request and that the Employer has not provided suitable employment,
- b) any proposal to provide or arrange for suitable employment for the worker, having regard to the medical certificate which the worker supplies and to the Employer's return-to-work program (if any) or otherwise.

20. Employer must advise change of business or industry

The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.

21. Records to be kept of wages

The Employer is required under section 174 of the Act to keep correct records of wages including details relevant to the calculation of premiums and to maintain these records for at least 5 years after the date of last entry to the record.

The Employer agrees to allow the Insurer to inspect these records upon reasonable notice.

Section 174 of the Act gives the State Insurance Regulatory Authority (SIRA) certain rights to inspect those records.

22. Cover conditional on Employer complying with Policy, Act and regulations

The indemnity provided by the policy is conditional on compliance by the Employer with the provisions of the policy, the Act and the regulations under the Act.

23. Act and regulations form part of Policy

The policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of the policy.

Notes:

1. Recovery of excess from Employer.

Under section 160 of the Act, the Employer is required to repay the prescribed excess amount in respect of each claim for weekly compensation paid by the Insurer. Currently, under that section and clause 5 of the Regulation, that prescribed excess amount is:

- a) if the employer concerned notified the relevant insurer of the injury that led to the weekly compensation claim of the worker within 5 days of the employer first becoming aware of the claim — the amount of excess is \$0.00,
- b) in all other cases—the lesser of the following:
 - i. the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,
 - ii. the maximum weekly wage rate as prescribed under section 35 of the Workers Compensation Act 1987.

Note. Under section 160 (2) of the Act, an employer is required to repay the prescribed excess amount to the insurer under a policy of insurance in respect of each weekly compensation claim that the insurer has paid under the policy. However, if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount, the amount the employer must repay is that lesser amount.

2. Disputes about premium.

If the Employer disputes the premium for this policy calculated by the insurer, the Employer may apply to the insurer for a “Premium Review”. A Premium review application must be completed and lodged to the insurer within 1 month after the insurer demands the premium. Even if the Employer lodges such an application, the premium demanded still remains payable.

3. Workplace injury management.

The Employer of an injured worker who has been totally or partially incapacitated for work has certain obligations under Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, including an obligation under section 49 to provide suitable employment if the worker is able to return to work. It is a condition of this Policy that the Employer must comply with the requirements of that Chapter, but only if the Insurer has taken appropriate steps to ensure that the Employer is made aware of those obligations.

4. Late payment fees.

Late payment fees will be charged in accordance with the *Late Payment Prescribed Rate* as per s172(5) of the 1987. Late payment fees are payable to Hospitality Industry Insurance.

5. Work Health & Safety (WHS).

It is a condition of the Policy that all policy holders comply with the insurers WHS program that will contribute to minimisation of workplace injuries and achievement of compliance with WHS legislation.

Hospitality Industry Insurance provides an electronic WHS Management system that is freely available to all policy holders to assist compliance with this condition. Alternatively, policy holders may use their own WHS Management system providing it is of equivalent content and quality to that provided by Hospitality Industry Insurance.

As part of the WHS program policy holders are required to complete a WHS Self Audit prior to Policy renewal.