



New South Wales

Insurance Premiums Order 2003–2004 Amendment (Motor Vehicle Allowances) Order 2004

under the

Workers Compensation Act 1987

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and on the recommendation of the WorkCover Authority, and in pursuance of section 168 of the *Workers Compensation Act 1987*, make the following Order.

Dated, this 23rd day of June 2004.

By Her Excellency's Command,

JOHN DELLA BOSCA, M.L.C.,

Minister for Commerce

Explanatory note

Under the definition of *wages* in clause 1 of Schedule 1 (Interpretation) to the *Insurance Premiums Order 2003–2004* certain motor vehicle allowances are excluded from the amount of wages used to calculate a workers compensation insurance premium. Clause 1A of that Schedule sets out the extent to which such motor vehicle and accommodation allowances are to be excluded from those wages.

The object of this Order is to amend the *Insurance Premiums Order 2003–2004* to fix the manner in which such motor vehicle allowances may be calculated. Two allowable methods are fixed, a continuous recording calculation method and an averaging calculation method.

This Order also makes a law revision amendment to the *Insurance Premiums Order 2003–2004* as a consequence of the commencement of the *Workers Compensation Legislation Amendment (Trainees) Act 2003*.

This Order is made under section 168 of the *Workers Compensation Act 1987*.

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Clause 1 Insurance Premiums Order 2003–2004 Amendment (Motor Vehicle Allowances) Order 2004

**Insurance Premiums Order 2003–2004 Amendment
(Motor Vehicle Allowances) Order 2004**

under the

Workers Compensation Act 1987

1 Name of Order

This Order is the *Insurance Premiums Order 2003–2004 Amendment (Motor Vehicle Allowances) Order 2004*.

2 Amendment of Insurance Premiums Order 2003–2004

The *Insurance Premiums Order 2003–2004* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Schedule 1 Interpretation

Omit clause 1A. Insert instead:

1A Extent to which motor vehicle and accommodation allowances to be excluded from wages

- (1) A motor vehicle allowance paid to a worker is to be excluded from wages for the purposes of this Order to the extent of an amount calculated at whichever of the following rates is applicable in the particular case:
 - (a) in the case of a worker paid an allowance under an award that specifies the allowance solely as a rate for each kilometre or part of a kilometre travelled by the worker in the course of the worker's employment by means of a motor vehicle provided or maintained by the worker—the rate specified in the award,
 - (b) in the case of any other worker—53.5 cents for each kilometre or part of a kilometre travelled by the worker in the course of business journeys by means of a motor vehicle provided or maintained by the worker.

Note. Where a worker is paid an allowance under an award that specifies the allowance wholly as a lump sum amount or partly as a lump sum amount and partly as a rate for each kilometre or part of a kilometre travelled by the worker in the course of the worker's employment by means of a motor vehicle provided or maintained by the worker—the amount of allowance to be excluded from wages for the purposes of this Order is to be calculated in accordance with paragraph (b).

- (2) If the amount calculated in accordance with subclause (1) is greater than the amount actually paid to a worker as a motor vehicle allowance, only the amount actually paid is to be excluded from the calculation of wages.
- (3) The amount of motor vehicle allowance paid to a worker that is to be excluded from wages for the purposes of this Order is to be calculated using whichever of the following 2 methods the employer prefers:
 - (a) the method set out in clause 1B (the *continuous recording calculation method*),
 - (b) the method set out in clause 1C (the *averaging calculation method*).

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Schedule 1

Amendments

- (4) An accommodation allowance paid to a worker is to be excluded from wages for the purposes of this Order to the extent of an amount calculated at whichever of the following rates is applicable in the particular case:
 - (a) in the case of a worker paid an allowance under an award that specifies the allowance as a rate for each night the worker is absent from the worker's usual place of residence—the rate specified in the award,
 - (b) in the case of any other worker—\$130 for each night the worker is absent from the worker's usual place of residence in the course of the worker's employment.
- (5) If the amount calculated in accordance with subclause (4) is greater than the amount actually paid to a worker as an accommodation allowance, only the amount actually paid is to be excluded from the calculation of wages.
- (6) In this clause, **award** means:
 - (a) an industrial instrument within the meaning of the *Industrial Relations Act 1996*, or
 - (b) any agreement with respect to salaries or wages entered into under the provisions of any other law of the State between an employer constituted by that law and an association or organisation representing a group or class of employees, or
 - (c) an award, agreement or other instrument under the law of the Commonwealth or of another State or Territory, being an award, agreement or other instrument of a similar nature to an instrument or agreement referred to in paragraph (a) or (b).

[2] Schedule 1, clauses 1B–1E

Insert after clause 1A:

1B Continuous recording calculation method

The continuous recording calculation method requires the following details to be kept and used for calculation:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the worker during a period of insurance by means of a motor vehicle provided or maintained by the worker,

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- (b) the specific purpose for which each such business journey was taken,
 - (c) the distance travelled by the worker during the period of insurance in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a).

1C Averaging calculation method

- (1) The averaging calculation method requires the following details to be kept and used for calculation for the first period of insurance in which a worker's employer chooses to adopt that method:
 - (a) the odometer readings at the beginning and end of each business journey undertaken by the worker during the relevant 12-week period by means of a motor vehicle provided or maintained by the worker,
 - (b) specific purpose for which each such business journey was taken,
 - (c) distance travelled by the worker during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a),
 - (d) odometer readings at the beginning and end of the relevant 12-week period for each vehicle provided or maintained by the worker for the purpose of undertaking business journeys,
 - (e) distance travelled by each such vehicle during the relevant 12-week period, calculated on the basis of the odometer readings referred to in paragraph (d),
 - (f) distance travelled by the worker in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by that vehicle during that period,
 - (g) distance travelled by the worker in the course of business journeys undertaken by means of each such vehicle during the period of insurance, calculated on the basis that the percentage for each such vehicle for the period of insurance is the same as the percentage for that vehicle for the relevant 12-week period.

- (2) After the first period of insurance in which odometer details are recorded in accordance with subclause (1), the calculation referred to in subclause (1) (g) is to be employed for the purpose of calculating the distance travelled by the worker in the course of business journeys undertaken by means of each vehicle referred to in subclause (1) during each of the next succeeding 4 periods of insurance, calculated on the basis that the percentage for each such vehicle for the period of insurance concerned is the same as the percentage for that vehicle for the relevant 12-week period.
- (3) After the first period of insurance in which odometer details are recorded in accordance with subclause (1), a worker's employer is not required to record the details referred to in that subclause for the worker for the next succeeding 4 periods of insurance unless:
 - (a) the Authority serves a notice on the employer before the commencement of a period of insurance during those 4 periods directing the employer to keep the details referred to in subclause (1) for those periods, or
 - (b) the employer wishes to use the recording method referred to in this clause for one or more additional motor vehicles used by the worker in any period of insurance or for any other reason.
- (4) In a situation referred to in subclause (3) (b), a worker's employer may make a new record of odometer readings for a period of insurance in accordance with subclause (1) to replace the details previously recorded for the worker. The provisions of subclause (3) then apply in relation to the new record.
- (5) A worker's employer who has adopted and employed the method of recording referred to in this clause for a worker for 4 successive periods of insurance must, in the next succeeding period of insurance, make a fresh recording of the details specified in subclause (1) if the employer intends to continue to use the same method of recording for the worker.
- (6) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

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- (7) For the purposes of making the calculation referred to in subclause (1) (g) for the period of insurance in which this clause commences, a worker's employer may estimate the distance travelled by a motor vehicle during any part of that period of insurance that occurs before that commencement.

1D Meaning of “relevant 12-week period”

- (1) In clause 1C, *relevant 12-week period* means a continuous period of at least 12 weeks, selected by the worker's employer, throughout which a motor vehicle is provided or maintained by a worker. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (2) The period may overlap the start or end of the period of insurance, so long as it includes part of the period.
- (3) If the averaging calculation method is used for 2 or more motor vehicles for the same period of insurance, the odometer readings for those motor vehicles must cover periods that are concurrent.

1E Replacing one motor vehicle with another motor vehicle

- (1) For the purposes of using the averaging calculation method, a worker's employer may nominate one motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (3) An employer must record the nomination in writing in the period of insurance in which the nomination takes effect.
- (4) However, the Authority may allow an employer to record the nomination at a later time.

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Schedule 1

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[3] Schedule 2 Application

Omit clause 2 of Schedule 2. Insert instead:

2 Policies exempt from Order

- (1) This Order does not apply to the following policies of insurance:
 - (a) a policy of insurance deemed by section 158 of the Act (as in force immediately before its repeal by the 2003 amending Act) to be held by an employer in respect of a trainee that continues in force by virtue of clause 2 of Part 18G of Schedule 6 to the Act,
 - (b) a policy of insurance issued or renewed by a specialised insurer that is exempted from insurance premiums orders by clause 147 of the *Workers Compensation Regulation 2003*.

- (2) In this clause:

the 2003 amending Act means the *Workers Compensation Legislation Amendment (Trainees) Act 2003*.

trainee means a trainee within the meaning of section 158 of the Act (as in force immediately before its repeal by the 2003 amending Act).

BY AUTHORITY