1995—No. 542

WORKERS COMPENSATION ACT 1987—REGULATION

(Workers Compensation (Insurance Premiums) Regulation 1995)

NEW SOUTH WALES

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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Workers Compensation Act 1987, has been pleased to make the Regulation set forth hereunder.

JEFFREY SHAW, Q.C., M.L.C.,
Minister for Industrial Relations.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Workers Compensation (Insurance Premiums) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

"approved" means approved by the Authority;

"Authority" means the Workcover Authority constituted under the WorkCover Administration Act 1989;

"category A employer", in relation to a policy, means an employer whose basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the policy at the time at which the insurer first demands a premium for the policy would exceed $2,000, assuming the period of insurance to which the premium relates to be 12 months (whether or not that period of insurance is in fact 12 months);

"category B employer" means an employer who is not a category A employer;

"claim" means a claim made by a worker against an employer to which a policy relates;

"cost of claims", in relation to the calculation of a premium for the issue or renewal of an employer's policy, means:

(a) except as provided by paragraph (b), the cost of claims for an injury year (within the meaning of Part 3) for the employer, being that cost as at the commencement of the period of insurance to which the premium relates; or

(b) after that period of insurance has expired, the cost of claims for an injury year (within the meaning of that Part) for the employer, being that cost as at the expiration of that period;

"employer" includes a person who proposes to become an employer;

"insurer" means a licensed insurer, or a former licensed insurer, within the meaning of the Act;

"period of insurance", in relation to a policy, means a period for which an insurer assumes risk under the policy, being a period which commences on the first day on which the policy is in force after having been issued or renewed;

''policy" or **"policy of insurance"** means a policy of insurance within the meaning of the Act;

"the Act" means the Workers Compensation Act 1987;

''wages" means wages as defined in section 174 (9) of the Act.

Meaning of "injury year"

4. In this Regulation, a reference to an injury year, when made in relation to the calculation of a premium for the issue or renewal of a policy, is a reference to any of the successive periods of 12 consecutive months occurring before the commencement of the period of insurance for which the premium is or is to be calculated.

Non wages-based calculation of premium

5. If the manner of calculation of the premium payable for a policy of insurance is not based on the wages payable to workers:

(a) a reference in this Regulation to wages is to be read as a reference to that other basis of calculation of the premium; and

(b) the form of any notice or declaration under this Regulation is to be appropriately modified having regard to the manner of calculation of the premium.

PART 2—DECLARATION OF WAGES

Employer to supply insurer with return relating to wages

6. (1) An employer must, as soon as practicable (but not later than 1 month) after:

(a) making an application to an insurer for the issue of a policy; or

(b) the renewal of a policy,

supply the insurer concerned with a notice in the approved form, duly completed, which contains a reasonable estimate of the wages that will be payable by the employer during the relevant period of insurance to workers employed by the employer.

(2) An employer must, not later than 2 months after the end of the relevant period of insurance relating to a policy, supply the insurer who issued or renewed the policy with a notice in the approved form, duly completed, which contains a full and correct declaration of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.

Declaration accompanying return

7. When an employer supplies an insurer with a notice under clause 6 (being a notice which relates to a period of insurance which has expired) the employer must also supply the insurer with:

(a) if no accountant, registered tax agent or registered company auditor was, during that period, engaged as a consultant to or in a similar independent capacity by the employer—a declaration in the approved form; or

(b) in any other case—a declaration in the approved form, to which is attached a report of a tax agent or registered company auditor as set forth in the attachment to that form.

Experience premium return

8. For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance, an insurer to whom the employer has applied €or the issue or renewal of a policy may, by notice in writing served on the employer not later than 1 month after the commencement or end of the period of insurance, require the employer to furnish the insurer, within 28 days of service of the notice:

(a) with a declaration in the approved form; and

(b) a statement setting forth (with respect to the last 2 injury years which occurred before the commencement of the period of insurance) the particulars relating to wages required by the attachment to that form to be inserted in it.

Offence by employer

9. (1) An employer who, without reasonable excuse, refuses or fails to comply with clause 6 or 7 or with a requirement made in accordance with clause 8 is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) An employer must not:

(a) in a notice or certificate under clause 6, 7 or 8, furnish information knowing it to be false or misleading in a material particular; or

(b) knowingly make a false declaration under clause 6, 7 or 8.

Maximum penalty: 20 penalty units.

PART 3—CERTIFICATION OF COST OF CLAIMS

Definition

10. In this Part:

"cost of claim", in relation to an injury year or a period of insurance, means:

(a) except as provided by paragraph (b), the total, calculated by an insurer, of the costs of each individual claim of which the insurer has notice at the time of expiry or renewal (as appropriate) of the policy concerned, being a claim made against a particular employer with respect to an injury received (or which is deemed by the Act or the former Act to have been received) during the injury year or the period of insurance, whichever is relevant, but not including:

(i) in relation to a policy issued or renewed so as to take effect at or after 4 p.m. on 30 June 1988 (other than a policy to which subparagraph (ii) applies), any claim under section 10 (Journey claims) of the Act; or

(ii) in relation to a policy issued or renewed so as to take effect at or after 4 p.m. on 30 June 1995, any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act; or

(b) where the particular employer does not agree with the calculation made by the insurer and applies to the Authority for a calculation of that total (and the application is not withdrawn or, in the opinion of the Authority, abandoned), that total as calculated by the Authority.

Cost of an individual claim

11. (1) For the purposes of this Regulation, the cost of an individual claim is (except as provided by subclause (2)) the sum of the following:

(a) the payments, if any, made by the insurer in respect of the claim pursuant to the Act or the former Act;

(b) the payments, if any, of damages at common law and under the Compensation to Relatives Act 1897 made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim;

(c) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the claim;

(d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs which were paid to the claimant or incurred by the insurer on the insurer's own account;

(e) the most accurate estimation for the time being by the insurer of the insurer's outstanding liability reasonably likely to arise out of the claim,

whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability which will arise) during or after the injury year or period of insurance in which the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received).

(2) However, the cost of an individual claim:

(a) does not include any amount calculated by reference to the insurer's costs of administration or profit; and

(b) is to be reduced by the amounts, if any, which have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance; and

(c) is to be reduced by the first $500 of the claim or, if the cost of the claim is less than $500, is to be reduced by that lesser cost; and

(d) does not include any amount paid or payable under section 64A of the Act (Compensation for cost of interpreter services); and

(e) does not include any amount which section 153A (4) (b) of the Act (Second-injury scheme) requires to be excluded from the claims experience of the employer.

(3) If the employer does not agree with the calculation made by the insurer of the cost of the individual claim and applies to the Authority for a calculation of the sum (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the cost of the claim is the sum of the following, as calculated by the Authority:

(a) the payments, fees, expenses and costs referred to in paragraphs (a)–(d) of subclause (1); and

(b) the most accurate estimation by the Authority of the insurer's outstanding liability reasonably likely to arise out of the claim.

(4) In this clause, references to the insurer's outstanding liability reasonably likely to arise out of the claim are references to the amount calculated by the insurer or the Authority (as appropriate) to be sufficient to meet all reasonably likely future payments in respect of the claim, including adjustments (at such rates, if any, as the Authority from time to time determines) to take account of expected future earnings on investments and expected future inflation or deflation on that amount.

(5) For the purpose of this clause, in the case of' a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the Motor Accidents Act 1988:

(a) the insurer's liability to indemnify an employer in respect of the employer's liability to the claimant independently of the Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the Workers Compensation Act 1987 applied to the award of damages concerned; and

(b) the insurer is taken not to be liable for legal costs connected with proceedings under the Motor Accidents Act 1988 if damages would not have been payable if that Division applied to that award.

(6) If the cost of an individual claim calculated or determined in accordance with this clause exceeds the large claim limit which applied when the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received), the cost of the individual claim is the amount of that large claim limit.

(7) For the purposes of subclause (6), the large claim limit specified in Column 2 of the Table to this clause applies to an injury which was received or is deemed to have been received during a year specified in Column 1 of that Table in relation to that limit.

TABLE

LARGE CLAIM LIMITS

Column 1 Period of 12 months commencing with:	Column 2 Large claim limit
30 June 1985	$100,000
30 June 1986	$200,000
30 June 1987 or 30 June of the years 1988 to 1994	$100,000
30 June 1995 or 30 June of any subsequent year	$150,000

Certificates relating to cost of claims

12. (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance:

(a) an employer to whom a policy has been issued by an insurer; or

(b) another insurer,

may, by notice in writing served on the insurer who issued the policy not later than 1 month after the commencement of the period of insurance, require the insurer who issued the policy to furnish the employer or other insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying (with respect to the whole or any part of the 2 last injury years which occurred or will have occurred before the commencement of the period of insurance) the particulars relating to costs of claims required by the form to be inserted in it.

(2) An insurer who, without reasonable excuse:

(a) fails to comply with a requirement made in accordance with subclause (l); or

(b) in purported compliance with any such requirement, furnishes a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

Effect of certificate

13. (1) Where an insurer has, in accordance with clause 12, furnished a certificate to an employer or another insurer for the purpose of ascertainment of the premium payable in respect of a period of insurance, the particulars relating to costs of claims specified in the last or only certificate so furnished are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance, unless subclause (2) applies.

(2) If the employer or any insurer (other than the insurer who furnished the certificate) does not agree with any of those particulars and applies to the Authority for a variation of those particulars (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the particulars relating to costs of claims specified in the certificate as confirmed or varied by the Authority are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance.

Employers who were previously self-insurers

14. (1) If an employer:

(a) makes an application to an insurer for the issue or renewal of a policy; and

(b) was a self-insurer during any part of the last 2 injury years occurring before the proposed period of insurance,

the cost of claims in relation to the period as a self-insurer is to be calculated (subject to any relevant determination of the Authority) as if the employer had been insured under a policy in respect of that period.

(2) The provisions of this Part relating to insurers apply (subject to such modifications and exceptions as the Authority may determine) to such an employer in respect of the period as a self-insurer.

PART 4—DEMAND FOR PREMIUM

Notice of premium calculation

15. (1) An insurer may not demand a premium for the issue or renewal of a policy to which an insurance premiums order applies unless the insurer has sent or sends at the time to the employer a notice in the approved form, duly completed, relating to the calculation of the premium in respect of that employer.

(2) The sending by an insurer of a notice referred to in subclause (1) to a broker or an intermediary or an agent of an employer (whether or not the notice is also addressed to the employer) does not constitute sending of the notice to the employer for the purposes of that subclause, but nothing in this subclause prevents the sending of any such notice to an ernployer by a postal or courier service.

PART 5—PROCEDURE BEFORE AUTHORITY RELATING TO INSURANCE PREMIUMS

Applications

16. (1) An application to the Authority:

(a) for the purposes of this Regulation or an insurance premiums order; or

(b) pursuant to section 170 or 175 of the Act,

must be lodged at the office of the Authority in a form approved by the Authority unless the Authority otherwise directs.

(2) The application must be accompanied by a concise statement of all relevant particulars in support of the application, including (where applicable) particulars of the premium demanded, that which the applicant seeks and the basis on which the premium has been calculated.

(3) If such an application has been lodged, the Authority must:

(a) within 21 days of the lodging of the application, send a copy of the application and any supporting documents to the respondent; and

(b) give the respondent a reasonable opportunity to make representations on the matter.

Answer

17. If a respondent who has notice of the application wishes to make representations to the Authority in relation to the application, the respondent must lodge those representations with the Authority in writing (unless the Authority otherwise directs).

Decision of Authority

18. The Authority:

(a) is to consider the application and may have regard to such representations as it thinks fit; and

(b) is to determine the matter to which the application relates; and

(c) is to inform the applicant and the respondent of its decision in such manner as it thinks fit.

Procedure generally

19. The Authority may, in its discretion:

(a) permit an actuary, auditor, accountant, insurance authority, medical referee or other person to sit with it as an assessor; and

(b) obtain and consider a report from any insurer, self-insurer or any other person referred to in paragraph (a), in connection with its dealing with an application referred to in clause 16 or any other matter.

Time for lodgment of certain applications

20. (1) An application to the Authority for the purposes of this Regulation or an insurance premiums order is to be made:

(a) in the case of an application relating to the premium payable for the issue of a policy—within 1 month after the date of the insurer's demand for the premium; or

(b) in the case of an application relating to the premium payable for the renewal of a policy—before or within 1 month after the date of expiry of the period for which premiums have been paid in respect of the policy or the date of the insurer's demand for the premium, whichever is the later, or within such further period as the Authority may, in special circumstances, approve in relation to that application.

(2) In this clause, a reference to the premium payable for the issue or renewal of a policy includes a reference to any part of a premium so payable.

Recovery of premium despite making of application

21. The making of an application to the Authority for the purposes of this Regulation or an insurance premiums order does not affect the entitlement of an insurer under the Act to recover the premium (or part of premium) concerned except to the extent that the Authority may otherwise direct in a particular case.

PART 6—POLICIES EXEMPT FROM INSURANCE PREMIUMS ORDERS

Further policies exempt from order—unregulated premiums

22. (1) Policies issued or renewed by a specialised insurer are exempted from insurance premiums orders.

(2) The exemption under subclause (1) is in addition to the exemptions provided by section 168 (4) (b) of the Act.

PART 7—PAYMENT OF PREMIUMS BY INSTALMENTS

Policies under which premiums may be paid by instalments

23. (1) An employer may elect to pay the premiums under a policy of insurance by instalments if

(a) the period of insurance is 12 months; and

(b) the employer is a category A employer for the purposes of the policy; and

(c) the election is made within 1 month after the commencement of the period of insurance to which the premium relate.

(2) Payment of the first instalment of any premiums by the due date constitutes an election to pay by instalments.

Number, size and times for payment of instalments

24. (1) If an employer elects to pay the premiums under a policy of insurance by instalments, the premiums are payable in instalments as follows:

Instalment No. 1 Payment to be made within 1 month after the commencement of the period of insurance. The amount of the instalment is to be one-third of the estimated premium for the policy.

Instalment No. 2 Payment to be made within 4 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which two-thirds of the estimated premium for the policy exceeds the amount paid as the first instalment.

Instalment No. 3 Payment to be made within 8 months after the commencement of the period of insurance. The amount of the instalment is to be the balance of the estimated premium for the policy.

Adjustment of Premium Payment to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due. The amount of such an adjustment is the amount by which the actual premium payable for a policy exceeds the amounts already paid.

(2) A notice in relation to an adjustment of premium as referred to in subclause (1) does not affect the service of a notice under section 172 (1) (c) of the Act.

(3) If, when the first instalment is due, the estimated premium for the policy cannot be determined, the amount of the first instalment is to be:

(a) one third of the estimated premium for the employer for the previous period of insurance; or

(b) if there was no such previous period of insurance—$800 or such greater amount as the employer and the insurer may agree.

(4) Subclause (3) applies only if the estimated premium cannot be determined because the employer has not yet supplied the relevant notice under clause 6 (1) and the insurer cannot estimate the premium by reference to wages for the previous period of insurance in accordance with the relevant insurance premiums order.

PART 8—MISCELLANEOUS

Transitional—operation of amendments

25. An amendment to this Regulation does not apply to or in respect of any policy of insurance that takes effect before the amendment commences, unless the amendment otherwise specifically provides.

Repeal of 1987 Regulation

26. (1) The Workers Compensation (Insurance Premiums) Regulation 1987 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under that Regulation is taken to have effect under this Regulation.

NOTES

TABLE OF PROVISIONS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes only, the provisions of the Workers Compensation (Insurance Premiums) Regulation 1987 made under the Workers Compensation Act 1987.

The new Regulation deals with the following matters:

(a) the duties of employers to supply workers compensation insurers with estimates of wages to be paid and details of actual wages paid, and the creation of offences for failure to give the required information and for giving false information;

(b) the calculation and certification by insurers of the cost of claims for workers compensation made against employers, including the amounts to be taken into account in calculating that cost and the calculation of the cost by the WorkCover Authority in disputed cases;

(c) the certification by insurers of the cost of claims and the variation by the Authority of the details certified;

(d) the calculation of the cost of claims in respect of employers who were previously self-insurers;

(e) requiring insurers to notify employers of certain details concerning the calculation of insurance premiums;

(f) the procedure for the making and determination of applications to the Authority with respect of insurance premiums;

(g) the payment of insurance premiums by instalments;

(h) the repeal of the existing regulation and a consequential savings provision.

This Regulation is made under the Workers Compensation Act 1987, including section 239 (the general regulation making power) and the various sections mentioned in the regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.