

**WORKERS' COMPENSATION (INSURANCE) ACT.**

**New South Wales**



ANNO VICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 18, 1973.**

An Act to provide for the variation of certain policies of insurance; to make further provision for the suspension or cancellation of licenses held by insurers; to provide for the cancellation of policies following the suspension, cancellation or expiry of licenses held by insurers; for these and other purposes to amend the Workers' Compensation Act, 1926; and for purposes connected therewith. [Assented to, 17th April, 1973.]

**BE**

*Workers' Compensation (Insurance).*

**B**E it enacted by the Queen's Most Excellent Majesty, by No. 18, 1973 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

## PART I.

## PRELIMINARY.

1. (1) This Act may be cited as the "Workers' Compensation (Insurance) Act, 1973". Short title and commencement.

(2) Subject to subsection (3), this Act shall commence on the date of assent.

(3) Part II and section 6 (f) shall commence upon such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

2. This Act is divided as follows :—

Division of Act.

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—INSURANCE PREMIUMS—*ss.* 3–5.

PART III.—AMENDMENT OF WORKERS' COMPENSATION ACT, 1926—*s.* 6.

## PART II.

## INSURANCE PREMIUMS.

3. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

"Amendment Scheme" means Amendment Scheme No. 16 of 1972 prepared and presented by the committee to the Governor and published in the Gazette of 7th January, 1972;

"committee"

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“committee” means the Insurance Premiums Committee constituted by section 30A of the Principal Act;

“domestic casual worker” means a worker within the classification designated by the tariff rate number 714 in Schedule One of the Principal Scheme;

“employer” has the same meaning as in the Principal Act;

“period” means, in relation to a policy of insurance—

(a) the period in respect of which the insurer has by the terms of the policy; or

(b) where the policy has been renewed, the further period in respect of which the insurer has by the terms of the renewal.

accepted liability to indemnify, in respect of any matters, the employer who obtained the policy;

“policy of insurance” means a policy of insurance or indemnity as defined in section 18 (1) of the Principal Act, not being a policy that relates to domestic casual workers and no other workers;

“prescribed surcharge” means, in relation to a policy of insurance, sixty-five per centum of the amount which bears the same proportion to the premium under the policy or, where the policy has been renewed, to the premium in respect of the renewal, as so much of the period of the policy as had not expired on 13th January, 1972, bears to the whole period of the policy;

“Principal Act” means the Workers' Compensation Act, 1926;

“Principal

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“Principal Scheme” means The New South Wales No. 18, 1973  
Workers' Compensation Fixed Insurance Premium  
Rates and Fixed Loss Ratio Scheme, 1945,  
prepared and presented by the committee to the  
Governor and published in the Gazette of 29th  
June, 1945 (as subsequently amended).

(2) A premium referred to in the definition of  
“prescribed surcharge” in subsection (1) does not include—

- (a) any premium in respect of a domestic casual worker;
- (b) any premium paid or payable pursuant to an adjustment to rates of premiums made by the committee under section 6 (7B) of the Workers' Compensation (Dust Diseases) Act, 1942; or
- (c) any amount payable by virtue of this Part.

4. (1) Every policy of insurance the period of which was current on 13th January, 1972, and whether or not that period is still current at the commencement of this Part, shall be deemed to be varied by the inclusion therein of an undertaking as described by subsection (2). Increase of premiums under certain contracts of insurance.

(2) The undertaking referred to in subsection (1) is an undertaking by the employer who obtained the policy of insurance that, where the insurer from whom he obtained the policy has, before the commencement of this Part, requested him in writing, or after that commencement so requests him, to pay pursuant to the Amendment Scheme and by way of additional premium under the policy an amount specified in the request, not exceeding the amount of the prescribed surcharge less any part of that amount already paid in pursuance of that Scheme, then the employer will so pay to the insurer the amount so specified.

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(3) An amount payable by an employer pursuant to a variation of a policy of insurance made by this section and not paid before the commencement of this Part shall, where the request referred to in subsection (2) or, where there was or is more than one such request, the first such request—

(a) was made to him before that commencement, become due and payable on that commencement;  
**or**

(b) is made to him after that commencement, become due and payable on the day on which the request or first request is made to him.

(4) A policy of insurance as deemed by this section to be varied may be enforced notwithstanding that the policy, by reason of such variation, does not conform to section 18 of the Principal Act.

**Partial  
validation  
of Scheme.**

**5.** The Amendment Scheme in so far as it relates to the rates of premium under policies of insurance obtained on or after 13th January, 1972, or in respect of the renewal of policies of insurance on or after that date, shall be deemed to have been validly prepared and presented in accordance with the provisions of the Principal Act and shall as on and from that date be deemed to have had, and shall have, full force and effect in accordance with its terms, but may be revoked or from time to time amended in the manner prescribed by that Act.

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**PART**

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## PART III.

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AMENDMENT OF WORKERS' COMPENSATION ACT, 1926.

15, 1926.

6. The Workers' Compensation Act, 1926, is amended—

Sec. 18.  
of Act No.

- (a) (i) by omitting from section 18 (1) the words "and shall maintain such policy in force :"  
and by inserting instead the following words  
and new paragraphs "<sup>Amendment (Compul-  
sory insurance.)</sup> and shall be guilty  
of an offence against this Act if—
- (a) he has not so obtained such a policy;  
or  
(b) no such policy so obtained by him is  
for the time being in force.";
- (ii) by omitting from section 18 (9) the words  
"one or";
- (b) by omitting from section 28 (1) (b) (vi) the words "any notice or statement mentioned in sub-  
section two of section one hundred and eighty-four  
of the Companies Act, 1961, as amended by  
subsequent Acts" and by inserting instead the words  
"any notice mentioned in section 180H of the  
Companies Act, 1961, or any Part A statement  
or Part B statement as defined for the purposes of  
Part VIb of that Act"; <sup>Sec. 28.  
(Informa-  
tion, etc.,  
to be  
supplied by  
licensees.)</sup>
- (c) (i) by omitting section 29 (1) and by inserting instead the following subsections :— <sup>Sec. 29.  
(Termi-  
nation of  
licenses.)</sup>
- (1) Subject to the provisions of this section  
the Commission may exercise, in relation to  
any license granted under section 27, the  
power specified in subsection (1) of section  
29c—
- (a) if it is satisfied of one or more of the  
following matters, events or things :—
- (i) that the licensee, being a  
corporation, has resolved that  
it be wound up voluntarily or  
by a court;
- (ii)

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- (ii) that, in the case of a licensee that is a corporation, a court orders that the corporation be wound up;
- (iii) that, in the case of a licensee that is a corporation, an inspector appointed under Part VIA of the Companies Act, 1961, or under any corresponding provision of any Act or ordinance relating to corporations for the time being in force in any other State or Territory of the Commonwealth, has reported that he is of the opinion that the company cannot pay its debts and should be wound up, or that he is of the opinion that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;
- (iv) that the licensee has failed to comply with any provision of this Act or of a scheme referred to in section 30A and such failure constitutes a substantial breach of the requirements of this Act or of that scheme;
- (v) that the licensee has been guilty of repeated breaches of this Act or of any such scheme, whether the breaches were of the same kind or of different kinds;

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- (vi) that the licensee has unreasonably failed, or unreasonably refused, to satisfy an award made by the Commission against an employer insured or indemnified by the licensee against the liability of the employer thereunder; or
- (vii) that the conduct of the licensee, his employees, or officers, or the arrangement of his affairs has been such that, in the opinion of the Commission, the Commission should exercise its power under this subsection in relation to the license;
- (b) if effective control of the business of the licensee, being a corporation, has, in the opinion of the Commission, been acquired, directly or indirectly, at any time after the license was granted, by any other corporation, and the licensee fails, upon being called upon by the Commission so to do, to establish to the reasonable satisfaction of the Commission the existence of matters, events or things such that, if it were presently applying for a license to carry on that business it would, in the opinion of the Commission, be granted such a license; or
- (c) if the licensee, upon being called upon by the Commission so to do, does not establish to the reasonable satisfaction of the Commission—
- (i) that the licensee is able to pay his debts;

(ii)



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- (ii) that the licensee has commenced the business for which he is licensed within a year from the date at which his license was granted, or that he has not suspended his said business for as long as a whole year;
- (iii) that the licensee has arranged suitable and adequate reinsurance of liabilities undertaken by him under policies of insurance or indemnity (as defined in subsection (1) of section 18), issued by him;
- (iv) that the licensee has arranged suitable and adequate reinsurance of liabilities undertaken by him under policies of insurance or indemnity, other than policies of insurance or indemnity, as so defined, issued by him;
- (v) that the licensee has made suitable and adequate provision for his accrued, continuing, future and contingent liabilities under policies of insurance or indemnity, as so defined, issued by him;
- (vi) that the licensee has made suitable and adequate provision for his accrued, continuing, future and contingent liabilities under policies of insurance or indemnity, other than policies of insurance or indemnity, as so defined, issued by him;

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- (vii) that the licensee has not in any one or more financial years indicated by the Commission incurred underwriting or other losses that are excessive; or
- (viii) that the licensee has in respect of any matters indicated by the Commission complied with the conditions of his license.

(1A) Where an application for the exercise by the Commission of the power referred to in subsection (1) in relation to a license is made to the Commission on the ground referred to in paragraph (b) of subsection (1) and—

- (a) the licensee establishes to the reasonable satisfaction of the Commission the existence of matters, events or things such that, if it were presently applying for a license to carry on its business it would, in the opinion of the Commission, be granted such a license; but
- (b) the Commission is of opinion that any license so granted would only be granted subject to certain conditions, or for a certain period,

the Commission shall make the variations or additions, or variations and additions, of or to the license held by the licensee which the Commission deems necessary in order that the license may be such as, in the opinion of the Commission, would be so granted.

- (ii) by omitting section 29 (2) (c) and by inserting instead the following paragraph :—
- (c) it is not proved by the licensee to the satisfaction of the Commission that the

licensee

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licensee is able to pay his debts and in determining whether or not he is able to do so the Commission shall take into account the accrued, continuing, future and contingent liabilities of the licensee.

- (iii) by inserting next after section 29 (2) the following new subsection :—

(2A) The Commission may vary the conditions of a license granted or deemed to have been granted under section 27, to such an extent as it deems necessary or desirable having regard to the obligations imposed on the licensee by or under any Commonwealth Act relating to insurance.

- (iv) by omitting section 29 (3) (a) and by inserting instead the following paragraphs :—

(a) Proceedings under subsection (7) of section 18c, or for the exercise by the Commission of the power referred to in subsection (1) of this section, in relation to any license shall be instituted by application by the Registrar in the form and manner prescribed by rules made under this Act, setting forth the matters, events or things referred to in the relevant subsection which are alleged against the licensee or which the licensee is required, in accordance with the said subsection (1), to establish to the reasonable satisfaction of the Commission, as the case may require.

(a1) Proceedings for the exercise by the Commission of the power referred to in subsection (2A) in relation to any licence shall

be

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be instituted by the Registrar in the form and manner prescribed by rules made under this Act. No. 18, 1973

- (d) by omitting from section 30A (21) (b) (ii) the words “, the cancellation of licenses of insurers”; Sec. 30A.  
(Insurance  
Premiums  
Com-  
mittee.)
- (e) by inserting next after section 30A the following new section :— New sec.  
30AA.

30AA. (1) In this section—

“committee” means the Insurance Premiums Committee constituted by section 30A; Further  
powers of  
committee.

“period” means, in relation to a policy of insurance—

- (a) the period in respect of which the insurer has by the terms of the policy; or
- (b) where the policy has been renewed, the further period in respect of which the employer has by the terms of the renewal,

accepted liability to indemnify, in respect of any matters, the employer who obtained the policy;

“policy of insurance” means a policy of insurance or indemnity as defined in subsection (1) of section 18;

“proportionately” means, in relation to a policy of insurance to which an increase or reduction of rates of premium is applied by a scheme pursuant to this section, in the proportion which so much of the period of the policy as has not expired on the date from which the scheme takes effect bears to the whole period of the policy, or in some lesser proportion specified in the scheme.

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(2) Where a scheme referred to in section 30A increases or reduces any rates of premium under any policies of insurance, the committee may include in the scheme provisions—

- (a) applying such increases or reductions proportionately to a policy of insurance the period of which is current at the date from which the scheme takes effect; and
- (b) requiring the employer who has obtained such a current policy to pay by way of additional premium to the insurer at the insurer's request, or requiring the insurer to pay by way of refund of premium to that employer, as the case may require, the amount of the increase or reduction, respectively, so applied to the policy.

(3) Provisions included in a scheme pursuant to this section may—

- (a) be expressed to apply to all employers, policies, premiums, or classifications, or some only, and to apply generally or subject to such exceptions, qualifications, or exemptions as are specified or provided for in the scheme; and
- (b) include provisions for and in relation to the payment of any amounts by instalments.

(4) Where any provisions so included affect the payments to be made in respect of a policy of insurance, the policy shall be deemed to be varied to incorporate those provisions.

(5) A policy of insurance as deemed by this section to be varied may be enforced notwithstanding that the policy by reason of such variation does not conform to section 18.

(f)

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(f) by inserting next after section 30E the following new section :—

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New sec.  
30F.

30F. (1) In this section—

Cancellation  
of policies  
following  
suspension  
or termina-  
tion of  
license.

“insurer” means a person who is or has been licensed under section 27;

“period” means, in relation to a policy—

- (a) the period in respect of which the insurer has by the terms of the policy; or
- (b) where the policy has been renewed, the further period in respect of which the insurer has, by the terms of the renewal,

accepted liability to indemnify, in respect of any matters, the employer who obtained the policy;

“policy of insurance” means a policy of insurance or indemnity as defined in subsection (1) of section 18;

“prescribed day” means—

- (a) in the case of a policy the period of which is current at the commencement of this section and which was obtained from an insurer whose license had, before that commencement, ceased to be in force—the day on which this section commences; or
- (b) in the case of a policy the period of which is current on the day on which the license of the insurer ceases to be in force—that day.

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(2) This section applies where the license of an insurer ceases to be in force, or so ceased before the commencement of this section.

(3) In any case where this section applies the employer who obtained a policy may, by notice in writing given on or after the prescribed day to the insurer from whom he obtained the policy, cancel the policy as from a date and time specified in the notice.

(4) Subject to this section, in any case where this section applies the insurer who issued a policy shall within seven days after the prescribed day post to the employer who obtained the policy, at the address of the employer last known to the insurer, a notice of cancellation of the policy.

(5) Such notice by the insurer shall state that the cancellation of the policy shall take effect at four o'clock in the afternoon of a date which shall be specified in the notice and which, subject to this section, shall be the seventh day after the day on which the notice is posted, and the effect of the notice shall be to cancel the policy accordingly.

(6) The Commission may, by notice to an insurer, or by order, and in relation to all the policies or any policies or classes of policies issued by the insurer, shorten or extend the time prescribed by subsection (4) or advance or defer the date to be stated in a notice pursuant to subsection (5), or both, and those subsections shall then have effect as though varied in accordance with the notice or order.

(7) The power conferred by subsection (6) to extend a time prescribed by subsection (4) may be exercised before or after that time has expired.

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(8) In any case where this section applies No. 18, 1973 the Commission may, by notice to the insurer and employer given in such manner as is prescribed by rules under this Act or, where no such rules have been made, as the Commission determines, cancel a policy as from a date and time specified in the notice.

(9) The premium for the issue or renewal of a policy cancelled under this section shall, notwithstanding any agreement to the contrary, be reduced in the proportion which so much of the period of the policy as is after the day on which the cancellation has effect bears to the whole period of the policy.

(10) Where an employer has paid to an insurer by way of premium for the issue or renewal of a policy a greater amount than the reduced premium referred to in subsection (9)—

- (a) the insurer shall forthwith repay the excess amount to the employer and if he fails to do so shall be guilty of an offence against this Act; and
- (b) the Commission, on application by the employer, and whether or not the insurer has been convicted of that offence, may make an award for the payment of the excess amount to the employer.

(11) An insurer whose license has ceased to be in force at the commencement of this section, or ceases after that commencement to be in force, shall, if so required in writing by the Commission, furnish to the Commission in writing and within a time specified by the Commission such particulars as the Commission may require in respect of policies issued by him and the periods of which were current at the time of that cessation, and in respect of the employers to whom the policies were issued.

(12)



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(12) An insurer who—

- (a) does not comply with subsection (4) or (11); or
- (b) after the day which, in relation to a policy, is the prescribed day demands or receives from an employer by way of premium in respect of that policy an amount which exceeds, or which together with any premium already paid for the issue or (where the policy has been renewed) the current renewal of the policy exceeds, the reduced premium referred to in subsection (9).

shall be guilty of an offence against this Act.

(13) The effect of the cancellation of a policy under this section is to terminate the period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

(14) For the purposes of subsection (1) of section 18, a policy is not in force if it has been cancelled under this section.

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ADMINISTRATION