



New South Wales

Workers Compensation (Insurance Premiums) Amendment (Premium Discount Scheme) Regulation 2001

under the

Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

Explanatory note

The object of this Regulation is to establish a premium discount scheme (*the Scheme*) for workers compensation insurance premium discounts for employers who implement programs to improve occupational health and safety and workplace injury management.

There are two strands to the Scheme:

- (a) the Premium Discount Scheme (General), and
- (b) the Small Business Strategy.

An employer may participate in either strand of the Scheme, but there are eligibility restrictions on employers for each strand.

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Explanatory note

Premium Discount Scheme (General)

The Premium Discount Scheme (General) (*the PDS (General)*) provides for the WorkCover Authority (*the Authority*) to approve Premium Discount Advisers (*PDA*s). An employer who wishes to participate in the PDS (General) engages an approved PDA. The functions of a PDA are:

- (a) to audit the performance and systems of employers to assess whether standards, benchmarks or performance criteria set by the Authority have been met, and
- (b) to issue certificates verifying whether those employers are entitled to a premium discount under the Scheme.

The Authority will determine a rating for each PDA (*the PDA Rating*) of between 0% and 15%. The PDA Rating of the employer's PDA is used to determine the amount of the discount to which an employer is entitled.

The PDS (General) provides for employers to receive insurance premium discounts for the three years in which they participate in the Scheme. Discount amounts are calculated in accordance with an Insurance Premiums Order made by the Governor under section 168 of the *Workers Compensation Act 1987*. The Insurance Premiums Order may set a maximum amount of a premium discount.

Small Business Strategy

The Small Business Strategy is restricted to employers who have 20 or fewer full time equivalent workers. The Strategy provides for the Authority to approve sponsors, who may be organisations such as an industrial organisation of employers, or a regional chamber of commerce.

The Authority may invite sponsors to submit proposals for programs to assist employers to improve occupational health and safety and injury management (*a small business premium discount program*). The Authority may enter into a funding agreement with a sponsor by which the Authority agrees to provide funds for the sponsor's program.

An employer who wishes to participate in the Small Business Strategy enrolls in a small business premium discount program. The Small Business Strategy provides for employers to receive discounts for the two or three years of the program in which they enroll. As in the PDS (General), discount amounts are calculated in accordance with the Insurance Premiums Order.

Premium discounts

The system of discounts is as follows:

First year of participation

The employer's PDA or sponsor carries out a verification within 6 months of the commencement of the employer's first year of participation. If the employer passes the verification within that period, the employer is provisionally entitled to a discount on the insurance premium for that year. The amount of the discount is based on:

- (a) in the case of an employer participating in the PDS (General)—the PDA Rating of the employer's PDA, or
- (b) in the case of an employer participating in the Small Business Strategy—a discount level of 10%.

The employer's PDA or sponsor carries out a second verification within 12 months of the commencement of the employer's first year of participation. If the employer passes this second verification, then the provisional discount is confirmed.

Second year of participation

If the employer's PDA or sponsor verifies that the employer has passed the second verification, the employer is provisionally entitled to a discount on the premium for the employer's second year of participation. The amount of the discount is based on:

- (a) in the case of an employer participating in the PDS (General)—two-thirds of the PDA Rating of the employer's PDA, or
- (b) in the case of an employer participating in the Small Business Strategy—a discount level of 10%.

The employer's PDA or sponsor carries out a third verification within 12 months of the commencement of the employer's second year of participation. If the employer passes this third verification within that period, the provisional discount for the second year of participation is confirmed.

Third year of participation

If the employer's PDA or sponsor verifies that the employer has passed the third verification, the employer is provisionally entitled to a discount on the premium for the employer's third year of participation. An employer participating in the Small Business Strategy may undertake a third year of participation in a small business premium discount program only if the employer enrolls in a program that provides for a third year.

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The amount of the discount is based on:

- (a) in the case of an employer participating in the PDS (General)—one-third of the PDA Rating of the employer's PDA, or
- (b) in the case of an employer participating in the Small Business Strategy—a discount level of 5%.

The employer's PDA or sponsor carries out a fourth verification within 12 months of the commencement of the employer's third year of participation. If the employer passes this fourth verification within that period, the provisional discount for the third year of participation is confirmed.

An employer who fails to pass a verification within the specified period may attempt that year of participation again (in the case of the Small Business Strategy, only with the consent of the sponsor). However, the three years of participation must be completed within a period of 5 years.

This Regulation is made under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, including section 230A of that Act.

Workers Compensation (Insurance Premiums) Amendment (Premium Discount Scheme) Regulation 2001

1 Name of Regulation

This Regulation is the *Workers Compensation (Insurance Premiums) Amendment (Premium Discount Scheme) Regulation 2001*.

2 Amendment of Workers Compensation (Insurance Premiums) Regulation 1995

The *Workers Compensation (Insurance Premiums) Regulation 1995* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Regulation.

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Workers Compensation (Insurance Premiums) Amendment (Premium Discount Scheme) Regulation 2001

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 11 Cost of an individual claim

Omit “Motor Accidents Act 1988” from clause 11 (5) (b).
Insert instead “*Motor Accidents Compensation Act 1999*”.

[2] Part 9

Insert after clause 26:

Part 9 Premium Discount Scheme

Division 1 Preliminary

27 Commencement

The Scheme commences at 4 pm on 30 June 2001.

28 Interpretation

(1) In this Part:

Code of Conduct for PDAs means a Code of Conduct for PDAs approved by the Authority under clause 68.

Code of Conduct for Sponsors means a Code of Conduct for sponsors approved by the Authority under clause 68.

cost of claims has the same meaning as in clause 11.

enrolled employer, in relation to a sponsor, means an employer enrolled in a small business premium discount program conducted by the sponsor.

managed fund insurer means an insurer to which Division 4 of Part 7 of the Act applies.

member, in relation to a PDA, means:

(a) if the PDA is or includes an individual—that individual or each such individual, and

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- (b) if the PDA is or includes a body corporate—each director or person involved in the management of the body corporate (however described), and
 - (c) if the PDA is or includes a partnership—each member of the partnership, and
 - (d) each employee of the PDA, and
 - (e) each person engaged by the PDA for the purpose of carrying out the PDA's functions under the Scheme.

minimum premium employer means a category B employer who pays the minimum premium in respect of a policy of insurance under Schedule 7 to an insurance premiums order that applies to the policy under section 168 of the Act.

occupational health and safety legislation means the *Occupational Health and Safety Act 1983* or the *Occupational Health and Safety Act 2000*.

Premium Discount Adviser or ***PDA*** means a Premium Discount Adviser approved by the Authority under clause 32.

Premium Discount Guidelines means guidelines issued by the Authority under clause 66.

Principal, in relation to a PDA, means a Principal of the PDA as referred to in clause 36.

relevant Insurance Premiums Order, in relation to the calculation of a discount under this Part on a premium with respect to a policy, means an insurance premiums order in force under section 168 of the Act that applies to the policy.

sponsor means a sponsor approved by the Authority under clause 42.

the Scheme means the Premium Discount Scheme established under clause 29.

- (2) For the purposes of this Part, an employer completes the PDS (General) when a PDA engaged by the employer verifies that the employer has passed the fourth verification (within the meaning of clause 50).

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Schedule 1 Amendments

29 Premium Discount Scheme

- (1) There is established a scheme called the “Premium Discount Scheme”, to be administered by the Authority.
- (2) The object of the Scheme is to provide for a discount on workers compensation insurance premiums for employers who implement programs to improve workplace safety and injury management for injured workers.
- (3) There are two strands to the Scheme:
 - (a) the Premium Discount Scheme (General) (*the PDS (General)*), and
 - (b) the Premium Discount Scheme Small Business Strategy (*the Small Business Strategy*).
- (4) An employer may participate in either strand of the Scheme, subject to this Part.

30 Employers eligible to participate in PDS (General)

- (1) An employer is eligible to participate in the PDS (General) if the employer has a policy of insurance with a licensed managed fund insurer.
- (2) However, the following classes of employers are not eligible to participate in the PDS (General):
 - (a) minimum premium employers,
 - (b) employers who:
 - (i) are participating in the Small Business Strategy, or
 - (ii) have passed the second verification under the Small Business Strategy, or
 - (iii) have completed the PDS (General), or
 - (iv) are precluded from participating in the PDS (General) by reason of clause 60 (Time limits on participation in Scheme).
- (3) Despite subclause (2) (b), if an employer referred to in that paragraph that is a body corporate merges with, acquires or is acquired by another body corporate, or reconstitutes itself into two or more bodies corporate, the body or bodies formed by the merger, acquisition or reconstitution is or are eligible to participate in the PDS (General) (if otherwise eligible).

31 Employers entitled to participate in Small Business Strategy

- (1) An employer is eligible to participate in the Small Business Strategy if the employer:
 - (a) has no more than 20 full time equivalent workers, and
 - (b) has a policy of insurance with a licensed managed fund insurer.
- (2) However, the following classes of employers are not eligible to participate in the Small Business Strategy:
 - (a) minimum premium employers,
 - (b) employers who:
 - (i) are participating in the PDS (General), or
 - (ii) have completed the PDS (General), or
 - (iii) have passed the fourth verification under the Small Business Strategy, or
 - (iv) who are precluded from participating in the Small Business Strategy by reason of clause 60 (Time limits on participation in Scheme).
- (3) An employer who enrolls in a small business premium discount program under Division 3 remains eligible to participate in the Small Business Strategy even if the number of the employer's workers subsequently increases to more than 20 full time equivalent workers.
- (4) Despite subclause (2) (b), if an employer referred to in that paragraph that is a body corporate merges with, acquires or is acquired by another body corporate, or reconstitutes itself into two or more bodies corporate, the body or bodies formed by the merger, acquisition or reconstitution is or are eligible to participate in the Small Business Strategy (if otherwise eligible).

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Division 2 Premium Discount Scheme (General)

Subdivision 1 Premium Discount Advisers

32 Approval of Premium Discount Advisers

- (1) The Authority may on application approve any of the following (*the applicant*) as a Premium Discount Adviser in accordance with the Premium Discount Guidelines:
 - (a) an individual,
 - (b) a body corporate,
 - (c) a group consisting of a combination of individuals or bodies corporate or both (including a partnership or other unincorporated association).
- (2) The Authority may not approve an applicant as a PDA unless:
 - (a) the applicant has an Australian Business Number, and
 - (b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the applicant's suitability to be a PDA and the character of the applicant's proposed members, and
 - (c) the Authority is satisfied that:
 - (i) the applicant is suitable to be a PDA, and
 - (ii) the applicant, and each of the applicant's proposed members, is of good character.
- (3) For the purpose of assessing whether an applicant is suitable to be a PDA and the character of the applicant's proposed members, the Authority may make such inquiries and undertake such investigations about the applicant, and each of the applicant's proposed members, as it thinks fit.
- (4) In this clause, *proposed member*, in relation to an applicant, has the same meaning as *member* has in relation to a PDA.

33 Conditions of approval

- (1) An approval as a PDA is subject to the following conditions:
- (a) the PDA must hold professional indemnity insurance covering the activities of the PDA (including the activities of the PDA's members) in carrying out the functions of a PDA,
 - (b) the PDA must sign a performance agreement containing such terms as the Authority may require, and must comply with that performance agreement,
 - (c) the PDA, and each member of the PDA, must comply with the Code of Conduct for PDAs,
Note. Clause 63 (1) provides that it is an offence for a PDA to fail to comply with the Code of Conduct for PDAs.
 - (d) the PDA must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 67 (for example, directions as to the use of audit tools),
 - (e) each Principal of the PDA, and each member of the PDA involved in carrying out audits under the Scheme, must satisfactorily complete such course of training as the Authority may direct,
 - (f) the PDA must co-operate with any review of the PDA by the Authority under clause 38, and must allow the Authority access to the PDA's premises and records for that purpose,
 - (g) any conditions of approval set out in the Premium Discount Guidelines.
- (2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

34 Functions of a PDA

A PDA has the following functions:

- (a) to audit the performance and systems of employers to assess whether standards, benchmarks or performance criteria set by the Authority have been met,

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- (b) to issue certificates verifying whether those employers are entitled to a premium discount under the Scheme,
- (c) such other functions as are set out in the Premium Discount Guidelines.

35 Relationship with employer

- (1) An employer may engage a PDA to act as PDA in relation to the employer for the purposes of the Scheme.
- (2) The PDA engaged by an employer may engage any other person or body in order to assist it to carry out its functions in relation to the employer under the Scheme.

36 Principals of a PDA

- (1) A PDA must have at least one Principal, and may have more than one Principal.
- (2) A Principal of a PDA is an individual who is:
 - (a) a member of the PDA (other than a person engaged by the PDA as referred to in paragraph (e) of the definition of *member* in clause 28), and
 - (b) nominated as a Principal by the PDA.
- (3) An individual may not be a Principal of more than one PDA.
- (4) Subclause (3) does not prevent a member of a PDA from carrying out work for more than one PDA.

37 Functions of Principals

The function of a Principal of a PDA is to ensure that the PDA and each member of the PDA complies with this Regulation, the Code of Conduct for PDAs, the Premium Discount Guidelines, the performance agreement signed by the PDA and any directions given by the Authority under clause 67.

38 Review of PDAs by Authority

- (1) The Authority may at any time review the performance and operations of a PDA, or of any member of the PDA, in accordance with the Premium Discount Guidelines.

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- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (3) The Authority may take action at any time under subclause (4) if it determines that:
- (a) the PDA or a member of the PDA has failed to comply with this Regulation, the Premium Discount Guidelines, the Code of Conduct for PDAs, the performance agreement signed by the PDA or with any direction given by the Authority under clause 67, or
 - (b) the PDA has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
 - (c) the PDA has entered into administration (whether voluntary or involuntary) or has been wound up, or
 - (d) the PDA has not been engaged by an employer during the three years preceding the commencement of a review by the Authority, or
 - (e) a Principal of the PDA ceases to be a member of the PDA, being a person who, in the opinion of the Authority, was integral to the performance or operations of the PDA.
- (4) The Authority may take any one or more of the following actions:
- (a) disallow or adjust the PDA Rating of the PDA by notice in writing,
 - (b) disallow or adjust the entitlement to a premium discount of an employer by whom the PDA is engaged by notice in writing,
 - (c) suspend or cancel the approval of a PDA by notice in writing.
- (5) Before taking action under subclause (4), the Authority may give an employer by whom the PDA concerned is engaged an opportunity to make oral or written submissions to the Authority about the matter.

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- (6) An action referred to in subclause (4) takes effect 14 days after notice of the action is given to the PDA.
- (7) The actions that the Authority may take under subclause (4) are in addition to any other powers of the Authority.

Note. For example, the Authority may also issue directions to a PDA or impose or vary conditions of an approval of a PDA.

Subdivision 2 PDA Ratings

39 Initial PDA Ratings

- (1) In its approval of a PDA, the Authority is to classify it as a Category 1, a Category 2 or a Category 3 PDA.
- (2) A Category 1 PDA has the PDA Rating for a Category 1 PDA specified in the Table to this clause until immediately before 4 pm on 30 June following its approval, unless the Authority reclassifies it as a Category 2 PDA under subclause (3).
- (3) A Category 1 PDA may, in accordance with the Premium Discount Guidelines, request the Authority to reclassify the PDA as a Category 2 PDA. The following provisions apply if such a request is made:
 - (a) the Authority is to determine in accordance with the Premium Discount Guidelines whether to reclassify the PDA as a Category 2 PDA,
 - (b) if the Authority reclassifies the PDA, the PDA has the PDA Rating for a Category 2 PDA specified in the Table to this clause from the date that the Authority notifies it of the reclassification until immediately before 4 pm on 30 June following its approval, and thereafter the PDA Rating of the PDA is as determined by the Authority under clause 40.
- (4) A Category 2 PDA or a Category 3 PDA has the PDA Rating specified in the Table to this clause for that category of PDA until immediately before 4 pm on 30 June following its approval. Thereafter, the PDA Rating of the PDA is as determined by the Authority under clause 40.

Table

PDA Category	PDA Rating
Category 1 PDA	5%
Category 2 PDA	10%
Category 3 PDA	15%

40 Subsequent determination of PDA Rating by Authority

- (1) Each year the Authority is to:
 - (a) assess the success of each PDA in achieving cost savings for employers engaging the PDA (including reductions in the cost of claims for employers), and
 - (b) on the basis of that assessment, determine a PDA rating for each PDA of 0% to 15%.
- (2) A PDA Rating determined by the Authority for a PDA has effect (or is taken to have effect) from the time specified by the Authority in the notice of determination (whether or not the notice is given to the PDA before or after the time specified in the notice).
- (3) A PDA Rating has effect until immediately before the time specified by the Authority in the next notice of determination of the PDA Rating for the PDA (including a notice disallowing or adjusting the PDA Rating of the PDA under clause 38).
- (4) The assessment referred to in subclause (1) (a) is to be undertaken in accordance with the Premium Discount Guidelines, and otherwise as the Authority determines.
- (5) For the purpose of undertaking an assessment, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (6) The Authority may publish the PDA Rating of PDAs from time to time in such manner as the Authority determines.

41 PDA Rating not transferable

- (1) A member of a PDA who becomes a member of another PDA or carries out work for another PDA does not thereby transfer the PDA Rating of the first-mentioned PDA to that other PDA.

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- (2) A PDA that merges with, or acquires or is acquired by, another PDA does not thereby transfer its PDA Rating to the other PDA, or acquire the PDA rating of that other PDA.

Division 3 Small Business Strategy

42 Approval of sponsors

- (1) The Authority may on application approve any of the following (*the applicant*) as a sponsor in accordance with the Premium Discount Guidelines:
 - (a) a body or organisation,
 - (b) a group consisting of more than one body or organisation.
- (2) The Authority may not approve an applicant as a sponsor unless:
 - (a) the applicant has an Australian Business Number, and
 - (b) the applicant has provided to the Authority such information as the Authority may reasonably require in order to assess the application.
- (3) For the purpose of an assessment under this clause, the Authority may make such inquiries and undertake such investigations about the applicant as it thinks fit.

43 Conditions of approval

- (1) An approval as a sponsor is subject to the following conditions:
 - (a) the sponsor must hold professional indemnity insurance covering the activities of the sponsor (including the activities of each person employed or engaged by the sponsor) in carrying out the functions of a sponsor,
 - (b) the sponsor must comply with the Code of Conduct for Sponsors,
Note. Clause 63 (2) provides that it is an offence for a sponsor to fail to comply with the Code of Conduct for Sponsors.
 - (c) the sponsor must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 67,

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- (d) the sponsor must comply with the terms of any funding agreement between the sponsor and the Authority,
 - (e) the sponsor must co-operate with any review of the sponsor by the Authority under clause 49, and must allow the Authority access to the sponsor's premises and records for that purpose,
 - (f) any conditions of approval set out in the Premium Discount Guidelines.
- (2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.
- 44 Authority may invite proposals for small business discount programs**
- (1) The Authority may at any time invite, in such manner as the Authority determines, sponsors to submit a proposal to conduct a program to assist employers to improve their occupational health and safety and injury management performance (a *small business premium discount program*).
 - (2) A proposal is to be made in accordance with the Premium Discount Guidelines.
 - (3) The Authority may request the sponsor to provide further information or particulars about the proposed small business premium discount program.
- 45 Assessment of proposals**
- (1) The Authority is to assess proposals for small business premium discount programs according to criteria and procedures set out in the Premium Discount Guidelines.
 - (2) After such assessment, the Authority may accept or reject the proposal, or accept it subject to specified modifications.
- 46 Funding agreements**
- A sponsor whose proposal has been accepted with or without modifications by the Authority may enter into an agreement (a *funding agreement*) in accordance with the Premium Discount Guidelines with the Authority by which the Authority agrees to

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provide funds to the sponsor for the proposed small business premium discount program on the terms set out in the funding agreement.

47 Relationship with employer

- (1) An employer may enrol in a small business premium discount program proposed to be conducted by a sponsor at any time after the sponsor is approved up to 6 months after the commencement of a premium year (within the meaning of clause 50) of the employer.
- (2) An employer who enrolled in a small business program of 2 years duration and who has passed the third verification for that program (within the meaning of clause 50) may enrol in the third year of a small business premium discount program of 3 years duration, but only with the consent of the sponsor conducting that program.

48 Functions of a sponsor

A sponsor has the following functions:

- (a) to implement its small business premium discount program in accordance with the funding agreement, this Regulation, the Premium Discount Guidelines, the Code of Conduct for Sponsors and any directions given by the Authority under clause 67,
- (b) such other functions as are set out in the Premium Discount Guidelines.

49 Review of sponsors by Authority

- (1) The Authority may at any time review the performance and operations of a sponsor in accordance with the Premium Discount Guidelines.
- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.

- (3) The Authority may take action at any time under subclause (4) if it determines that:
 - (a) a sponsor has failed to comply with the funding agreement, this Regulation, the Premium Discount Guidelines, the Code of Conduct for Sponsors or with any direction given by the Authority under clause 67, or
 - (b) the sponsor has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
 - (c) the sponsor has entered into administration (whether voluntary or involuntary) or has been wound up, or
 - (d) the small business premium discount program conducted by the sponsor has ceased to be viable.
- (4) The Authority may take any one or more of the following actions:
 - (a) disallow or adjust the entitlement to a premium discount of an enrolled employer by notice in writing,
 - (b) suspend or cancel the approval of a sponsor by notice in writing,
 - (c) suspend or cancel the sponsor's program by notice in writing.
- (5) The Authority may by notice in writing require a sponsor to repay to the Authority any funds provided to the sponsor by the Authority that:
 - (a) have not been spent by the sponsor, or
 - (b) if spent, were not spent in accordance with the funding agreement.
- (6) Before taking action under subclause (4), the Authority may give an employer enrolled in a program conducted by the sponsor concerned an opportunity to make oral or written submissions to the Authority about the matter.
- (7) An action referred to in subclause (4) or (5) takes effect 14 days after the notice of the action is given to the sponsor.

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- (8) The actions that the Authority may take under subclause (4) or (5) are in addition to any other powers of the Authority.

Note. For example, the Authority may also issue directions to a sponsor or impose or vary conditions of an approval of a sponsor.

- (9) The Authority may recover funds payable to it under subclause (5) as a debt in a court of competent jurisdiction.

Division 4 Premium discounts

50 Definitions

- (1) In this Division:

first verification means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the first verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer’s sponsor for the first verification.

first year of participation, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the first verification and the second verification.

fourth verification means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the fourth verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer’s sponsor for the fourth verification.

premium year, in relation to an employer, means a period of insurance of up to 12 consecutive months commencing on the date of issue or renewal of a policy of insurance by the employer.

second verification means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the second verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer’s sponsor for the second verification.

second year of participation, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the third verification.

third verification means a verification to assess whether:

- (a) in the case of an employer participating in the PDS (General)—the employer has met the standards, benchmarks or performance criteria set by the Authority for the third verification, or
- (b) in the case of an employer participating in the Small Business Strategy—the employer has met the objectives set by the employer’s sponsor for the third verification.

third year of participation, in relation to an employer, means the premium year of the employer in which the employer attempts to pass the fourth verification.

year of participation means the first year of participation, the second year of participation or the third year of participation.

- (2) For the purposes of this Division:
 - (a) an employer passes a verification when the employer’s PDA or sponsor issues a certificate verifying that the employer:
 - (i) in the case of an employer participating in the PDS (General)—has met the standards, benchmarks or performance criteria set by the Authority for that verification, or
 - (ii) in the case of an employer participating in the Small Business Strategy—has met the objectives set by the sponsor for that verification, and

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- (b) a reference to a PDA Rating, in relation to a PDA verifying that an employer has passed a verification, is a reference to the PDA Rating of the PDA at the time that it so verifies.

51 First year of participation

- (1) An employer is to attempt to pass the first verification within 6 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.
- (2) If the employer's PDA or sponsor verifies that the employer has passed the first verification within that period, the employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's first year of participation.
- (3) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the *PDS level* for the first year of participation is:
 - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the first verification, or
 - (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

Note. The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.

- (4) An employer is to attempt to pass the second verification within 12 months of the commencement of the employer's first year of participation. The employer may make more than one attempt during that period.
- (5) The employer's entitlement to the discount referred to in subclause (2) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the second verification.

52 Change in PDA Rating—first year of participation

- (1) This clause applies to an employer who is participating in the PDS (General).

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- (2) If the PDA who verifies that the employer has passed the second verification is the same PDA who verified that the employer passed the first verification, but the PDA Rating of that PDA has changed since then, the *PDS level* for the first year of participation is a percentage rate equal to the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the second verification (even though that may result in a lower PDS level).
 - (3) If the PDA who verifies that the employer has passed the second verification is different to the PDA who verified that the employer passed the first verification, the *PDS level* for the first year of participation is a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the second verification (even though that may result in a lower PDS level).

53 Second year of participation

- (1) An employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's second year of participation if the employer's PDA or sponsor verifies that the employer has passed the second verification.
- (2) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the *PDS level* for the employer's second year of participation is:
 - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to two-thirds of the PDA Rating of the PDA who verifies that the employer has passed the second verification, and
 - (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 10%.

Note. The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.
- (3) An employer is to attempt to pass the third verification within 12 months of the commencement of the employer's second year of participation. The employer may make more than one attempt during that period.

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- (4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the third verification.

54 Change in PDA Rating—second year of participation

- (1) This clause applies to an employer who is participating in the PDS (General).
- (2) If the PDA who verifies that the employer has passed the third verification is the same PDA who verified that the employer passed the second verification, but the PDA Rating of that PDA has changed since then, the *PDS level* for the second year of participation is a percentage rate equal to two-thirds of the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the third verification (even though that may result in a lower PDS level).
- (3) If the PDA who verifies that the employer has passed the third verification is different to the PDA who verified that the employer passed the second verification, the *PDS level* for the second year of participation is a percentage rate equal to two-thirds of the PDA Rating of the PDA who verifies that the employer has passed the third verification (even though that may result in a lower PDS level).

55 Third year of participation

- (1) An employer is provisionally entitled to a discount on the insurance premium payable with respect to the employer's third year of participation if the employer's PDA or sponsor verifies that the employer has passed the third verification.

Note. An employer who is participating in the Small Business Strategy has a third year of participation only if the employer is enrolled in a small business premium discount program of 3 years duration.

- (2) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the *PDS level* for the third year of participation is:
 - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the third verification, or

- (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 5%.

Note. The relevant Insurance Premiums Order may set a maximum amount of premium discount for a year of participation.

- (3) An employer is to attempt to pass the fourth verification within 12 months of the commencement of the employer's third year of participation. The employer may make more than one attempt during that period.
- (4) The employer's entitlement to the discount referred to in subclause (2) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the fourth verification.

56 Change in PDA Rating—third year of participation

- (1) This clause applies to an employer who is participating in the PDS (General).
- (2) If the PDA who verifies that the employer has passed the fourth verification is the same PDA who verified that the employer passed the third verification, but the PDA Rating of that PDA has changed since then, the **PDS level** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA at the time that the PDA verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).
- (3) If the PDA who verifies that the employer has passed the fourth verification is different to the PDA who verified that the employer passed the third verification, the **PDS level** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).

57 Verifications

- (1) A PDA verifies whether an employer has passed a verification by carrying out an audit. A PDA must carry out an audit in accordance with the Premium Discount Guidelines and any directions given by the Authority under clause 67.

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- (2) A PDA is to verify an employer as having passed a verification if the employer has achieved the standards, benchmarks or performance criteria set by the Authority for that verification.
- (3) A sponsor must carry out a verification in accordance with the terms of the funding agreement, the Premium Discount Guidelines and any directions given by the Authority under clause 67.
- (4) A sponsor is to verify an employer as having passed a verification if the employer has met the objectives set by the sponsor for that verification.

58 Provisional entitlement not confirmed

An employer who does not pass a verification within the period specified for that verification (and whose provisional entitlement to a discount is therefore not confirmed) must repay to the employer's insurer (in such manner as the insurer specifies) an amount equal to the amount of discount received by the employer as a result of the provisional entitlement.

59 Year of participation may be repeated

- (1) An employer who does not pass a verification specified for a year of participation within the period specified for that year of participation may attempt to pass that verification again in the employer's next premium year, or the premium year following that premium year.
- (2) However, an employer participating in the Small Business Strategy may only attempt to pass a verification again under this clause with the sponsor's consent.
- (3) **First verification and second verification attempted again**
Clause 51 (and clause 52, if relevant) apply to the premium year in which the employer attempts to pass the first verification and the second verification again.
- (4) **Second verification only attempted again**
If the employer passed the first verification in the employer's first year of participation but did not pass the second verification, the following provisions apply:

- (a) in the premium year in which the employer attempts to pass the second verification again, the employer is taken to have passed the first verification and is not required to pass that verification again, and
 - (b) clause 51 (and clause 52, if relevant) otherwise apply to that premium year.
- (5) **Third verification attempted again**
Clause 53 (and clause 54, if relevant) apply to the premium year in which the employer attempts to pass the third verification again.
- (6) **Fourth verification attempted again**
Clause 55 (and clause 56, if relevant) apply to the premium year in which the employer attempts to pass the fourth verification again.

60 Time limits on participation in Scheme

An employer ceases to be eligible to participate in the Scheme after the expiry of a period of 5 years from the commencement of the premium year in which the employer first attempted to pass the first verification.

Division 5 Reviews and appeals

61 Internal review

- (1) An applicant for approval as a PDA that is aggrieved by a decision of the Authority to refuse to approve the applicant may request the General Manager of the Authority to review the decision.
- (2) A PDA that is aggrieved by a determination of a PDA Rating for the PDA by the Authority may request the General Manager to review the determination.
- (3) A request for a review is to:
 - (a) be in writing, and
 - (b) clearly outline the reasons for the request, and

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- (c) be served on the Authority within 14 days of the day on which the Authority gave the applicant notice of the decision or determination concerned.
- (4) The PDA is to provide any documents or information in support of the request that the Authority requires the PDA by notice in writing to provide.
- (5) The General Manager may delegate the review of a decision or determination under this clause, but only to a person who was not involved with the original decision or determination.

62 Appeal to Administrative Decisions Tribunal

- (1) A PDA that is aggrieved by a decision of the Authority to cancel or suspend the PDA's approval may appeal to the Administrative Decisions Tribunal (*the Tribunal*) against the decision.
- (2) An appeal must be made within 14 days (or such longer period as the Authority may allow) after notice of the decision is given to the PDA. The appeal is to be lodged with the Tribunal, and notice giving details of the appeal is to be given to the Authority.
- (3) An appeal does not affect any decision with respect to which it is made until the appeal is determined.

Division 6 Offences

Note. The workers compensation legislation sets out other offences that may affect persons participating in or involved in the Scheme, in particular offences dealing with fraud on the workers compensation scheme (see section 173A (Giving false information for premium calculation) of the Act and section 235A (Fraud on workers compensation scheme) of the *Workplace Injury Management and Workers Compensation Act 1998*).

63 Failure to comply with Code of Conduct

- (1) A PDA must comply with the Code of Conduct for PDAs.
Maximum penalty: 50 penalty units.
- (2) A sponsor must comply with the Code of Conduct for sponsors.
Maximum penalty: 50 penalty units.

64 Purporting to be a PDA

- (1) A person who is not a PDA must not indicate that the person is a PDA.

Maximum penalty: 50 penalty units.

- (2) A person who is not a member of a PDA must not indicate that the person is a member of a PDA.

Maximum penalty: 50 penalty units.

- (3) Without limiting subclauses (2) and (3), a person indicates that the person is a PDA or a member of a PDA if the person continues to act as a PDA or a member of a PDA after the approval of the PDA has been suspended or cancelled.

65 Failure to notify Authority of changes concerning PDA

A PDA must notify the Authority in writing if any of the following changes takes place within 14 days after the change takes place:

- (a) a Principal of the PDA ceases to be a Principal, or a member of the PDA,
- (b) the PDA ceases to operate, or merges with or acquires another PDA,
- (c) a change in the composition of the PDA that materially affects the skills or expertise of the PDA in occupational health and safety or injury management.

Maximum penalty: 50 penalty units.

Division 7 General**66 Premium Discount Guidelines**

- (1) The Authority may from time to time issue guidelines for or with respect to the following matters:

- (a) the criteria to be used by the Authority in determining the suitability of an applicant, or a class of applicants, to be a PDA or a sponsor,
- (b) conditions of approval for PDAs and sponsors,

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- (c) the functions of PDAs and sponsors,
- (d) the engagement of PDAs by employers (including fees payable to PDAs by employers),
- (e) the enrolment of employers in small business premium discount programs (including fees payable to sponsors by employers),
- (f) the criteria to be used by the Authority in classifying a PDA as a Category 1 PDA, a Category 2 PDA or a Category 3 PDA,
- (g) the reclassification of a Category 1 PDA as a Category 2 PDA,
- (h) the criteria to be used by the Authority in determining PDA Ratings for PDAs,
- (i) benchmarks, standards or performance criteria to be achieved by employers in order for the employers to be entitled to a premium discount under the PDS (General) or the Small Business Strategy,
- (j) notification of matters and provision of information to the Authority by PDAs and sponsors,
- (k) the carrying out of audits and verifications by PDAs and verifications by sponsors,
- (l) the functions of PDAs and sponsors,
- (m) the submission and assessment of proposals for small business premium discount programs,
- (n) the content and conduct of small business premium discount programs,
- (o) the nature of funding agreements between the Authority and sponsors,
- (p) review of PDAs or sponsors by the Authority,
- (q) other matters in connection with the Scheme.

67 Directions by Authority to PDAs or sponsors

The Authority may at any time give directions to PDAs and sponsors concerning the carrying out of the Scheme. Such directions may be given to all PDAs or sponsors, or to a particular PDA or sponsor, or a particular class of PDAs or sponsors.

68 Codes of Conduct

- (1) The Authority may at any time issue a Code of Conduct for PDAs or a Code of Conduct for Sponsors (or both) and may at any time vary or revoke a Code of Conduct.
- (2) A Code of Conduct may provide for any of the following matters:
 - (a) conditions of approval for PDAs or sponsors or particular classes of PDAs or sponsors,
 - (b) standards of behaviour of PDAs and members of PDAs,
 - (c) standards of behaviour of sponsors, and persons employed or engaged by sponsors to carry out the functions of a sponsor under the Scheme,
 - (d) operational requirements for PDAs or sponsors,
 - (e) any other matter in connection with the Scheme.

69 Calculation of premium discount

- (1) Calculation of the amount of a premium discount under this Part is to be made in accordance with the relevant Insurance Premiums Order, including any maximum premium discount amount set in the relevant Insurance Premiums Order.
- (2) An insurer may make provision for any premium discount to which an employer is entitled (and any adjustments arising from changes to an entitlement to the discount) in any manner that the insurer chooses.

Note. For example, an insurer may give a premium discount by decreasing the amount of an instalment payable, or by giving the employer a refund, or a rebate on the next premium payable by the employer. The insurer may require an employer whose entitlement to a discount was not confirmed to repay the discount, or may increase the amount of an instalment payable.

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- (3) Clause 24 does not prevent an insurer from adjusting an instalment in accordance with this clause.

70 Powers of Authority if PDA or sponsor ceases to operate

- (1) If a PDA ceases to operate (whether because its approval is suspended or cancelled or for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the PDS (General), including arranging another PDA for the employer.
- (2) If a sponsor ceases to operate (whether because its approval is suspended or cancelled or for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the Small Business Strategy, including arranging for enrolled employers to participate in a small business premium discount program conducted by another sponsor.

71 Statistics

The Authority may collect and disseminate statistics and other information arising out of the Scheme (including records of individuals) for the following purposes:

- (a) promoting education and knowledge about the Scheme or about occupational health and safety or injury management,
- (b) research into workers compensation, occupational health and safety or injury management,
- (c) statistical analysis.

BY AUTHORITY
