



New South Wales

# Workers Compensation Amendment (Premiums Review) Regulation 2005

under the

Workers Compensation Act 1987

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

JOHN DELLA BOSCA, M.L.C.,  
Minister for Commerce

## Explanatory note

The object of this Regulation is to amend the *Workers Compensation Regulation 2003* as follows:

- (a) to prescribe amounts, instead of the \$500 amount currently set out in the *Workers Compensation Act 1987* (*the Act*), as the excess that an employer must repay to a workers compensation insurer after a weekly compensation claim is paid to an injured worker (**Schedule 1 [1]**), being:
  - (i) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0, or
  - (ii) in all other cases—the lesser of the following:
    - (A) the amount that is the current weekly wage rate of the worker (as determined by section 42 of the Act),
    - (B) if the claim that is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50,
- (b) to remove the ability of certain small business employers and insurers to agree that a reduced excess, or no excess, is to be paid in such cases (**Schedule 1 [1]**),
- (c) to remove a redundant subclause (being clause 51 (2)) (**Schedule 1 [1]**),
- (d) to remove definitions that are now redundant (**Schedule 1 [2]**),
- (e) to provide that in determining an individual cost of claim or the cost of a provisional payment of compensation an amount linked to the prescribed excess amount referred to above is to be deducted from that determined amount (**Schedule 1 [3] and [4]**),

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#### Explanatory note

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- (f) to provide that insurance premiums under the Act may be paid in instalments as follows:
  - (i) in three instalments over 12 months in relation to policies of insurance that are issued or renewed before 4pm on 30 June 2007,
  - (ii) where the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments—in four payments over 12 months or in twelve payments over 12 months (**Schedule 1 [5]**),
- (g) to change a clause in the standard provisions of an employer's insurance policy (relating to the time in which an employer must notify an insurer of an injury) as a consequence of an amendment to section 44 (Early notification of workplace injury) of the *Workplace Injury Management and Workers Compensation Act 1998* (**Schedule 1 [6]**),
- (h) to change a note to those standard provisions as a consequence of the amendment outlined in paragraph (a) above (**Schedule 1 [7]**).

This Regulation is made under the *Workers Compensation Act 1987*, including sections 160, 171 and 280 (the general regulation-making power).

## **Workers Compensation Amendment (Premiums Review) Regulation 2005**

under the

Workers Compensation Act 1987

### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment (Premiums Review) Regulation 2005*.

### **2 Commencement**

This Regulation commences at 4 pm on 31 December 2005.

### **3 Amendment of Workers Compensation Regulation 2003**

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

**[1] Clause 51 Prescriptions for purposes of excess recoverable from employer**

Omit clause 51 (1) and (2). Insert instead:

- (1) For the purposes of section 160 of the Act, the following is prescribed:
  - (a) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0,
  - (b) in all other cases—the lesser of the following:
    - (i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,
    - (ii) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50.

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

**[2] Clause 127 Definitions**

Omit the definitions of *category A employer* and *category B employer*.

**[3] Clause 137 Cost of an individual claim**

Omit clause 137 (2) (c). Insert instead:

- (c) is to be reduced by:
  - (i) in the case where the injured worker's weekly payment of compensation is less than \$500 or is not known (for example, the claim is for payment of medical expenses compensation only)—\$500 or, if the cost of the claim is less than \$500, that lesser cost, or
  - (ii) in any other case—an amount that is the lesser of the following:
    - (A) the amount of one week's weekly payment of compensation to the injured worker,

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- (B) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50, and

**[4] Clause 138 Cost of provisional payments of compensation**

Omit clause 138 (2) (c). Insert instead:

- (c) is to be reduced by:
  - (i) in the case where the injured worker's provisional weekly payment of compensation is less than \$500 or is not known (for example, the claim is for provisional payment of medical expenses compensation only)—\$500 or, if the cost of the payments is less than \$500, that lesser cost, or
  - (ii) in any other case—an amount that is the lesser of the following:
    - (A) the amount of one week's provisional weekly payment of compensation to the injured worker,
    - (B) if the payment is under a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50, and

**[5] Part 20, Division 8**

Omit the Division. Insert instead:

**Division 8 Payment of premiums by instalments**

**Subdivision 1 Payment in three instalments**

**148 Policies under which premiums may be paid by three instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in three instalments (together with any required adjustment of premium) under this Subdivision if:
  - (a) the period of insurance is 12 months, and
  - (b) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$3,000, and
  - (c) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.

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- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Subdivision, the *required instalments deposit* is, subject to clause 149 (3), an amount equal to one-third of the estimated premium for the policy (as estimated for that payment).
- (4) An employer may not make an election under this Subdivision in relation to a policy of insurance that was issued or renewed on or after 4pm on 30 June 2007.

### 149 Number, size and times for payment of instalments

- (1) If an employer elects to pay the premiums under a policy of insurance by three instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the balance of the premium is payable in the following instalments:

#### **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 (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

#### **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 (as estimated for that payment) taking into account the amounts already paid as instalments (including the required instalments deposit).

#### **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 by way of instalments (including the required instalments deposit).

- (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.

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- (3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit is required to be paid, the amount of the required instalments deposit 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 130 (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.

## **Subdivision 2 Payment in four instalments**

### **149A Policies under which premiums may be paid in four instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in four instalments (together with any required adjustment of premium) under this Subdivision if:
  - (a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and
  - (b) the period of insurance is 12 months, and
  - (c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$1,000, and
  - (d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.
- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Subdivision, the *required instalments deposit* is, subject to clause 149B (3), an amount equal to one-quarter of the estimated premium for the policy (as estimated for that payment).

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### 149B Number, size and times for payment of instalments

- (1) If an employer elects to pay the premiums under a policy of insurance by instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

#### **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 one half of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

#### **Instalment No 3**

Payment to be made within 7 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which three-quarters of the estimated premium for the policy (as estimated for that payment) exceeds the amounts already paid as instalments (including the required instalments deposit).

#### **Instalment No 4**

Payment to be made within 10 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 (as estimated for that payment) taking into account the amounts already paid as instalments (including the required instalments deposit).

#### **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 by way of instalments (including the required instalments deposit).

- (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.



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- (3) If the estimated premium for the policy cannot be determined by the time the required instalments deposit is required to be paid, the amount of the required instalments deposit is to be:
    - (a) one-quarter of the estimated premium for the employer for the previous period of insurance, or
    - (b) if there was no such previous period of insurance—\$300 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 130 (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.

### **Subdivision 3 Payment in twelve instalments**

#### **149C Policies under which premiums may be paid in twelve instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance in twelve instalments (together with any required adjustment of premium) under this Subdivision if:
  - (a) the scheme agent through whom the policy of insurance is to be provided to the employer has notified the employer that it has the facilities to enable such instalment payments, and
  - (b) the period of insurance is 12 months, and
  - (c) the basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the employer's policy of insurance at the time at which the insurer first demands a premium for the policy exceeds \$5,000, and
  - (d) the election is made within 1 month after the commencement of the period of insurance to which the premiums relate.
- (2) Payment of the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Subdivision, the *required instalments deposit* is, subject to clause 149D (3), an amount equal to one-twelfth of the estimated premium for the policy (as estimated for that payment).

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### 149D Number, size and times for payment of instalments

- (1) If an employer elects to pay the premiums under a policy of insurance by instalments in accordance with this Subdivision and pays the required instalments deposit (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

#### **Instalment No 2**

Payment to be made within 2 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which two-twelfths of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as the required instalments deposit.

#### **Instalment No 3**

Payment to be made within 3 months after the commencement of the period of insurance. The amount of the instalment is to be the amount by which three-twelfths of the estimated premium for the policy (as estimated for that payment) exceeds the amount paid as instalments (including the required instalments deposit).

#### **Instalment Nos 4–11**

Payment to be made within 1 month after the date on which the last instalment was due. The amount is to be calculated in the same manner as Instalment Nos 2 and 3 adjusted appropriately according to the number of the instalment to be paid.

#### **Instalment No 12**

Payment to be made within 12 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 (as estimated for that payment) taking into account instalments already paid (including the required instalments deposit).

#### **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 by way of instalments (including the required instalments deposit).

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- (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 the estimated premium for the policy cannot be determined by the time the required instalments deposit (that is, Instalment No 1) or Instalment Nos 2, 3 or 4 are required to be paid, the amount of the required instalments deposit or other instalment is to be:
    - (a) one-twelfth of the estimated premium for the employer for the previous period of insurance, or
    - (b) if there was no such previous period of insurance—\$300 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 130 (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.

**[6] Schedule 1 Forms**

Omit clause 8 of Form 3. Insert instead:

**8 Employer must give Insurer or WorkCover notice of injury to worker**

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

**[7] Schedule 1, Form 3**

Omit note 1. Insert instead:

- 1** *Recovery of excess from Employer.* Under section 160 of the Act, the Employer is required to repay a prescribed excess amount in respect of each claim for weekly compensation paid by the Insurer. Currently, under that section and clause 51 of the Regulation, that prescribed excess amount is:
  - (a) if the employer concerned notified the relevant insurance scheme agent of the injury that lead to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0, or
  - (b) in all other cases—the lesser of the following:
    - (i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,

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- (ii) if the claim is covered by a policy of insurance that was issued or renewed before 4pm on 30 June 2006—\$1,449.50.

An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums.

BY AUTHORITY

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