



New South Wales

Workers Compensation Amendment (Retro-Paid Loss Premium Method) Regulation 2009

under the

Workers Compensation Act 1987

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

JOSEPH TRIPODI, MP
Minister for Finance

Explanatory note

The object of this Regulation is to make amendments to the *Workers Compensation Regulation 2003* as a consequence of the establishment of an optional alternative method for calculating the premiums payable for certain policies of worker compensation insurance under section 168A of the *Workers Compensation Act 1987* (known as the **Retro-Paid Loss Premium Method**).

This Regulation:

- (a) deals with the calculation of “cost of claims” for the purposes of such Retro-Paid Loss Premium Method policies, and
- (b) provides that a certain component of the premium payable under such Retro-Paid Loss Premium Method policies (known as **the deposit premium**) may be paid in monthly or quarterly instalments, and
- (c) makes other amendments consequential on the establishment of the Retro-Paid Loss Premium Method of premium calculation.

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

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Clause 1 Workers Compensation Amendment (Retro-Paid Loss Premium Method)
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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Retro-Paid Loss Premium Method) Regulation 2009*.

2 Commencement

This Regulation commences at 4 pm on 30 June 2009 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Workers Compensation Regulation 2003

[1] Clause 127 Definitions

Omit the definition of *cost of claims*. Insert instead:

cost of claims means:

- (a) in relation to the calculation of a premium for the issue or renewal of an employer's policy (other than a retro-paid loss premium policy):
 - (i) except as provided by paragraph (ii), the cost of claims (within the meaning of Division 4) for an injury year for the employer, being that cost as at the commencement of the period of insurance to which the premium relates, or
 - (ii) after that period of insurance has expired, the cost of claims (within the meaning of that Division) for an injury year for the employer, being that cost as at the expiration of that period, and
- (b) in relation to the calculation of a premium for the issue or renewal of an employer's policy (being a retro-paid loss premium policy), the cost of claims for the employer for the period of insurance concerned.

[2] Clause 127

Insert in alphabetical order:

retro-paid loss premium policy means a policy to which the optional alternative method of premium calculation (within the meaning of section 168A of the Act) applies.

[3] Clause 130 Employer to supply insurer with return relating to wages— standard policies

Insert after clause 130 (2):

- (3) This clause does not apply in relation to a retro-paid loss premium policy.

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[4] Clause 131

Insert after clause 130:

**131 Employer to supply insurer with return relating to wages—
retro-paid loss premium policies**

- (1) This clause applies in relation to a retro-paid loss premium policy.
- (2) An employer must, at least 2 months before the commencement of a period of insurance, supply the insurer concerned with a notice in the approved form, duly completed, which contains a reasonable estimate of the wages that will be payable by the employer during the period of insurance to workers employed by the employer.
- (3) An employer must, at the request of an insurer who issued a policy at any time during the period of insurance of the policy, supply the insurer with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that have actually been paid by the employer during that period of insurance to workers employed by the employer up to the date specified in the insurer's request.
- (4) An employer must, not later than 2 months after the end of the period of insurance of a policy, supply the insurer who issued the policy with a notice in the approved form, duly completed, which contains a full and correct declaration by the employer of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.

[5] Clause 133 Offence by employer

Insert "or 131" after "clause 130".

[6] Clause 135

Omit the clause. Insert instead:

135 Definitions

- (1) In this Division, *cost of claims* means the total of the following costs:
 - (a) in relation to an injury year related to, or a period of insurance for, a policy (other than a retro-paid loss premium policy):
 - (i) the total of the costs of each individual claim of which the insurer has notice at the time of expiry or renewal (as appropriate) of the policy concerned,

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- being a claim made against a particular employer with respect to an injury received (or that is deemed by the Act or the former Act to have been received) during the injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,
- (ii) the total of the costs of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, under Part 3 of Chapter 7 of the 1998 Act by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker employed by a particular employer with respect to an injury received (or that is deemed by the Act to have been received) during the injury year or the period of insurance, and
- (b) in relation to an injury year related to, or a period of insurance for, a retro-paid loss premium policy:
- (i) the total of the costs of each individual claim of which the insurer has notice at the time of each adjustment date concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the Act or the former Act to have been received) during the period of insurance, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,
 - (ii) the total of the costs of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, under Part 3 of Chapter 7 of the 1998 Act by the insurer, being payments of compensation on the basis of provisional acceptance of liability to a worker employed by a particular employer with respect to an injury received (or that is deemed by the Act to have been received) during the period of insurance,
- but, in any case where a single event leads to 3 or more individual claims, the total costs of all those claims in relation to that event are not to exceed the amount that is twice the relevant large claim limit for the policy (as determined in accordance with clause 137 (5) and (7)).

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- (2) Despite subclause (1), *cost of claims*, in relation to a policy issued or renewed so as to take effect before 4 pm on 30 June 1995, has the meaning given to it by this clause before its substitution by the *Workers Compensation Amendment (Retro-Paid Loss Premium Method) Regulation 2009*.

[7] Clause 136 Prevention of double allowance for provisional compensation payments

Omit “paragraph (b) of the definition of *cost of claims* in clause 135” from clause 136 (2) (c).

Insert instead “paragraphs (a) (ii) and (b) (ii) of the definition of *cost of claims* in clause 135 (1)”.

[8] Clause 137 Cost of an individual claim

Insert “in relation to a policy (other than a retro-paid loss premium policy)—” before “is to be reduced” in clause 137 (2) (b).

[9] Clause 137 (2) (b1)

Insert after clause 137 (2) (b):

- (b1) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers’ Contribution Fund or pursuant to a policy of reinsurance, and

[10] Clause 137 (6)

Insert “in relation to a policy (other than a retro-paid loss premium policy)” after “subclause (5)”.

[11] Clause 137 (7)

Insert after clause 137 (6):

- (7) For the purposes of subclause (5), in relation to a retro-paid loss premium policy, an employer is, before the commencement of the policy, to elect a large claim limit of one of the following amounts to apply to injuries received or deemed to have been received during the period of insurance:
- (a) \$350,000,
 - (b) \$500,000.

[12] Clause 138 Cost of provisional payments of compensation

Insert “in relation to a policy (other than a retro-paid loss premium policy)—” before “is to be reduced” in clause 138 (2) (b).

[13] Clause 138 (2) (b1)

Insert after clause 138 (2) (b):

- (b1) in relation to a retro-paid loss premium policy—is to be reduced by the amounts, if any, that have been recovered or that, in the opinion of the Nominal Insurer, are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the Act, from the Insurers’ Contribution Fund or pursuant to a policy of reinsurance, and

[14] Clause 140A

Insert after section 140:

**140A Certificates by scheme agents relating to cost of claims—
retro-paid loss premium policy**

- (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance in relation to a retro-paid loss premium policy, the Nominal Insurer may, by notice in writing, require the scheme agent through whom the policy was issued, to furnish the Nominal Insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying the particulars relating to costs of claims requested in the notice.
- (2) A scheme agent must not, without reasonable excuse:
- (a) fail to comply with a requirement made in accordance with subclause (1), or
- (b) in purported compliance with any such requirement, furnish a certificate knowing that the certificate contains particulars that are false or misleading in a material particular or knowing that the certificate is incomplete in a material particular.

Maximum penalty: 20 penalty units.

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[15] Part 20, Division 8, Subdivision 1

Omit the Subdivision. Insert instead:

Subdivision 1 Preliminary

148 Application of Division

- (1) Subdivisions 2 and 3 apply in relation to policies other than retro-paid loss premium policies.
- (2) Subdivisions 4 and 5 apply in relation to retro-paid loss premium policies.

149 Definition

In this Division, *deposit premium*, in relation to a retro-paid loss premium policy of insurance, means a premium for the policy calculated at the commencement of, or during, the period of insurance using the method for the calculation of a deposit premium set out in the relevant insurance premiums order that applies to that policy.

[16] Part 20, Division 8, Subdivisions 4 and 5

Insert after Subdivision 3 of Division 8 of Part 20:

Subdivision 4 Payment in four instalments—retro-paid loss premium policies

149E Policies under which premiums may be paid in four instalments

- (1) An employer may elect to pay the deposit premium under a retro-paid loss premium policy in four instalments (together with any required adjustments of premium) under this Subdivision if:
 - (a) the period of insurance is 12 months, and
 - (b) the election is made within 1 month after the commencement of the period of insurance to which the deposit premium relates.
- (2) Payment of the first instalment (that is, Instalment No 1) within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments under this Subdivision.
- (3) For the purposes of this Subdivision, the *first instalment* is an amount equal to one-quarter of the deposit premium for the policy.

149F Number, size and times for payment of instalments

If an employer elects to pay a deposit premium by instalments in accordance with this Subdivision and pays the first instalment (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the remaining instalments are payable 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 deposit premium for the policy (as calculated for that payment) exceeds the amount paid as the first instalment.

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 deposit premium for the policy (as calculated for that payment) exceeds the amounts already paid as instalments.

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 deposit premium for the policy (as calculated for that payment) taking into account the amounts already paid as instalments.

Note. Adjustments of the actual premium for a retro-paid loss premium policy are calculated at the relevant adjustment dates in accordance with the relevant insurance premiums order. Payment is to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due: see section 172 (1) (c) of the Act.

Subdivision 5 Payment in twelve instalments—retro-paid loss premium policies**149G Policies under which premiums may be paid in twelve instalments**

- (1) An employer may elect to pay the deposit premium under a retro-paid loss premium policy in twelve instalments (together with any required adjustment of premium) under this Subdivision if:
 - (a) the period of insurance is 12 months, and
 - (b) the election is made within 1 month after the commencement of the period of insurance to which the premium relates.

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- (2) Payment of the first instalment (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 *first instalment* is an amount equal to one-twelfth of the deposit premium for the policy.

149H Number, size and times for payment of instalments

If an employer elects to pay the deposit premium under a policy of insurance by instalments in accordance with this Subdivision and pays the first instalment (that is, Instalment No 1) within 1 month after the commencement of the period of insurance, the remaining instalments are payable 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 deposit premium for the policy (as calculated for that payment) exceeds the amount paid as the first instalment.

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 deposit premium for the policy (as calculated for that payment) exceeds the amount paid as instalments.

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 deposit premium for the policy (as calculated for that payment) taking into account instalments already paid.

Note. Adjustments of the actual premium for a retro-paid loss premium policy are calculated at the relevant adjustment dates in accordance with the relevant insurance premiums order. Payment is to be made within 1 month after service on the employer of a notice that payment of such an adjustment is due: see section 172 (1) (c) of the Act.