

Insurance Premiums Order 2015-2016 (2015 SI 281)

[2015-281]



New South Wales

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Insurance Premiums Order 2015–2016 (2015 SI 281)



New South Wales

1 Name of Order

This Order is the *Insurance Premiums Order 2015–2016*.

2 Commencement

This Order commences at 4 pm on 30 June 2015 and must be published in the Gazette.

3 Calculation of insurance premium payable by employer

The premium payable by an employer for a policy of insurance is to be calculated by requiring the premium to be calculated for a period of insurance of not more than 12 months and:

- (a) if the employer is an experience-rated employer for the purposes of the policy, in accordance with the following formula:

$$P = (BTP \times CPA) - ESI - ESR - PD + Q + D + M - A$$

- (b) if the employer is a small employer for the purposes of the policy, in accordance with the following formula:

$$P = BTP - ESI - RTWI - PD + Q + D + M - A$$

where:

P is the premium for the time being payable by the employer in respect of the period of insurance to which the policy relates, being:

- (a) except as provided by paragraph (b), the initial premium so payable in accordance with this Order, or
- (b) where adjustments are required to be made to that premium by reason of the operation of this Order, the premium so payable by reason of those adjustments.

BTP is the basic tariff premium for the employer, calculated with respect to the period of

insurance in accordance with Schedule 3.

CPA is the claims performance adjustment for the employer calculated with respect to the period of insurance in accordance with Schedule 4.

ESI is the employer safety incentive, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 10.

ESR is the employer safety reward, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 12.

PD is the performance discount, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 13.

Q is the premiums adjustment contribution, if any, for the employer.

D is the dust diseases contribution, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 9.

M is the Mine Safety Fund premium adjustment, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 7.

A is the apprentice incentive amount, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 8.

RTWI is the return to work incentive, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 11.

4 Discount available for premiums paid in full

- (1) An employer (other than a small employer) is entitled to a discount of 3 percent on the initial premium payable by the employer for a policy of insurance if:
 - (a) the period of insurance to which the policy relates is 12 months (or a period of less than 12 months if the policy is issued to an employer who is a member of a group to enable the policy to renew on the same date as the policies of other members of the group), and
 - (b) the employer has paid the discounted amount of the premium in full by the date on which payment of the premium is due, and
 - (c) the employer has not elected to pay the premium by instalments, and
 - (d) the employer has notified the insurer, in accordance with the regulations, of the reasonable estimate of the wages that will be payable during the period of insurance.

Note—

Clause 147 of the *Workers Compensation Regulation 2010* requires an employer to notify the insurer concerned of the matter referred to in paragraph (d).

- (2) A small employer is entitled to a discount of 5 percent on the initial premium payable by the small employer for a policy of insurance if:
- (a) the period of insurance to which the policy relates is:
 - (i) 12 months, or
 - (ii) a period of less than 12 months but only if the policy is issued to a small employer who is a member of a group to enable the policy to renew on the same date as the policies of other members of the group, or
 - (iii) a period of less than 12 months but only if the policy is issued to a small employer to enable the policy to expire at the end of a month, and
 - (b) the small employer has paid the discounted amount of the premium in full by the date on which payment of the premium is due, and
 - (c) the small employer has not elected to pay the premium by instalments.

5 Recovery of excess from employer: section 160 of Act

For the purposes of the definition of **prescribed excess amount** in section 160 (1) of the Act, the following excess amount is specified:

- (a) if the employer concerned notified the relevant insurance scheme agent of the injury that led 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 weekly payment of compensation to which the worker is entitled as determined by section 36 of the Act,
 - (ii) \$1,999.30.

Note—

Under section 160 (2) of the Act, an employer is required to repay the prescribed excess amount 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.

6 Late payment prescribed rates: sections 170 (8) and 172 (5) of Act

For the purposes of sections 170 (8) and 172 (5) of the Act, the **prescribed rate** is 0.825% per month compounded monthly.

7 Cost of claims: clause 152 (1) (a1) of the Regulation

- (1) For the purposes of clause 152 (1) (a1) of the *Workers Compensation Regulation 2010*, the **cost of claims**, in relation to an injury year related to, or a period of insurance for, a policy, means the total of the costs of each individual claim of which the insurer has notice at the time of renewal of the policy 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 a prior injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or 11 (Recess claims) of the Act.

Note—

Clause 152 (1) of the *Workers Compensation Regulation 2010* provides that, 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.

- (2) In subclause (1), the cost of an individual claim (**C**) is to be calculated using the following formula:

$$C = ((CC \times (1 - R\%)) \times (1 - RTWI\%))$$

where:

C is the cost of the individual claim.

CC is the unadjusted costs of the individual claim calculated in accordance with subclauses (3)–(5).

R% is the amount recovered as a percentage of the total cost of an individual claim calculated in accordance with subclause (6).

RTWI% is the return to work incentive percentage for the employer and is:

- (a) for a small employer—0, and
- (b) for an experience-rated employer—calculated with respect to the period of insurance in accordance with subclause (7).
- (3) In subclause (2), **CC** is \$150,000 (being the **large claim limit** for the policy) or the sum of the following at the commencement of the period of insurance, whichever is the lesser:
- (a) weekly compensation payments, if any, made by the insurer in respect of the claim pursuant to the Act,
- (b) provisional weekly payments of 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,

- (c) the payments, if any, of permanent impairment under section 66 (Entitlement to compensation for permanent impairment) of the Act made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (d) the payments, if any, made by the insurer in respect of the claim pursuant to Division 9 (Commutation of compensation) of Part 3 (Compensation—benefits) of the Act either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (e) the payments, if any, made by the insurer in respect of the claim pursuant to section 25 (Death of worker leaving dependants) of the Act,
- (f) the payments, if any, of damages at common law and under the *Compensation to Relatives Act 1897* made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,

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

- (4) However, **CC** does not include any amount that section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer.
- (5) For the purpose of subclause (3), if an employer, after the renewal of a policy, requests reimbursement of any weekly compensation payments in respect of a period of incapacity before that renewal, the Nominal Insurer may adjust the amount of weekly compensation payments and re-calculate the employer's premium.
- (6) In subclause (2), **R%** is to be calculated using the following formula:

$$R\% = \frac{R}{TCC}$$

where:

R is the sum of amounts recovered by the insurer in relation to any individual claim, but:

- (a) does not exceed TCC, and
- (b) does not include amounts recovered under section 160 of the Act.

TCC is the total cost of an individual claim calculated in accordance with clauses 152–155 of the *Workers Compensation Regulation 2010* as if the policy were issued so as to take effect immediately before 4 pm on 30 June 2015.

(7) In subclause (2), the return to work incentive percentage **RTWI%** for an experience-rated employer is to be calculated as follows:

(a) if the claim was made against a policy that took effect at or after 4 pm on 30 June 2015 and the injured worker returned to sustained suitable employment within a period specified in Column 1 of the Table to this subclause, the percentage rate specified in Column 2 of the Table that corresponds to that period,

Table

Column 1	Column 2
Return to work period after date of injury:	RTWI%
Less than 13 weeks	0.15
13 weeks or greater but less than 26 weeks	0.1
26 weeks or greater but less than 52 weeks	0.05

(b) in any other case, in accordance with the following formula:

$$\text{RTWI}\% = 0$$

(8) In subclause (7), **sustained suitable employment** means suitable employment for a period of at least 3 consecutive months before the commencement of the period of insurance concerned.

8 Exemption limit for certain employers: section 155AA (8) of Act

The **exemption limit** (within the meaning of section 155AA (8) of the Act) for the following employers for the 2015–2016 financial year is fixed at \$0:

- (a) an employer who carries on a business that is covered by Table A classes 612310, 612315, 612320, 612322, 612324, 612326, 612330, 931120, 931130, 931930, 931940 or 931950 (being classes that refer to a per capita rate), regardless of whether the employer carries on any other business,
- (b) an employer who carries on a business in the thoroughbred racing industry and who is required by the Rules of Racing (within the meaning of the [Thoroughbred Racing Act 1996](#)) to hold a policy of insurance with Racing NSW, regardless of whether the employer carries on any other business.

Note—

The effect of fixing the exemption limit for the specified employers at \$0 is that those employers will not be **exempt employers** within the meaning of section 155AA (Exempt employers not required to obtain policy of insurance) of the Act.

9 Transitional adjustment provision

- (1) An employer may apply to the Nominal Insurer to have the employer's premium for the period of insurance adjusted downward if the new premium percentage rate is more than 1.3 times greater than the old premium percentage rate.
- (2) This clause does not apply if the new premium percentage rate is greater than the old premium percentage rate solely because of:
 - (a) a change to a classification under the *Insurance Premiums Order 2014–2015* to a classification under this Order (both classifications being correct), or
 - (b) a change of business activity.
- (3) The Nominal Insurer may issue guidelines for or with respect to any of the following:
 - (a) the manner in which applications under this clause are to be made,
 - (b) criteria for determining how downward adjustments are calculated,
 - (c) other matters relevant to the transition to the calculation of premiums under this Order.
- (4) If the Nominal Insurer calculates a downward adjustment of a premium, the insurer must redetermine the employer's premium in accordance with that downward adjustment.
- (5) A downward adjustment, or an application for a downward adjustment, under this clause is not a **disputed aspect** for the purposes of section 170 of the Act.
- (6) In this clause:

new premium percentage rate, in relation to an employer, means a percentage rate calculated in accordance with the following formula:

$$NP\% = \frac{BTP \times CPA}{W_0} \times \frac{100}{1}$$

where:

BTP is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3.

CPA is the claims performance adjustment for the employer calculated with respect to the period of insurance in accordance with Schedule 4.

W₀ is the total wages payable to workers by the employer in respect of the period of insurance for which the premium is to be calculated.

old premium percentage rate, in relation to an employer, means a percentage rate

calculated in relation to the premium for the period of insurance immediately preceding the current period of insurance:

- (a) if the employer was a medium or large employer (within the meaning of the [Insurance Premiums Order 2014–2015](#)) for the purposes of calculating that premium, in accordance with the following formula:

$$OP\% = \frac{(T \times (1 - S)) + (E \times S)}{W_0} \times \frac{100}{1}$$

- (b) if the employer was a small employer (within the meaning of that Order) for the purposes of calculating that premium, in accordance with the following formula:

$$OP\% = \frac{T}{W_0} \times \frac{100}{1}$$

where **E**, **S**, **T** and **W₀**, are the amounts calculated in accordance with the [Insurance Premiums Order 2014–2015](#) to determine the employer's premium for the period of insurance immediately preceding the current period of insurance.

10 Schedules form part of Order

Schedules 1–16 form part of this Order.

Schedule 1 Interpretation

(Clause 10)

1 Definitions

- (1) In this Order:

apprentice has the same meaning as in the [Apprenticeship and Traineeship Act 2001](#).

apprentice incentive amount, in relation to an employer, means the amount calculated in accordance with Schedule 8.

basic tariff premium, in relation to a policy, means the basic tariff premium for the policy calculated in accordance with Schedule 3.

claim means a claim made by a person against an employer to which a policy relates.

claims performance adjustment, in relation to an employer, means the rate calculated as a result of the employer's claims history in accordance with Schedule 4.

dust diseases contribution, in relation to an employer, means an amount equivalent to the contributions, if any, payable by an insurer in respect of the employer to the Workers' Compensation (Dust Diseases) Fund (plus any GST payable)

that is calculated in accordance with Schedule 9.

employer includes a person who proposes to become an employer.

employer safety incentive, in relation to an employer, means the amount calculated in accordance with Schedule 10.

employer safety reward, in relation to an employer, means the amount calculated in accordance with Schedule 12.

GST has the same meaning as in the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth.

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

limited proprietary company means a proprietary company limited by shares as referred to in section 112 of the [Corporations Act 2001](#) of the Commonwealth.

NSW WorkCover Industry Classification System or **NSWWIC System** means the industry classification system set out in Table B.

per capita rate means a rate specified in Column 3 of Table A that is expressed otherwise than as a percentage.

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

policy or **policy of insurance** means a policy of insurance within the meaning of the Act.

predecessor—see clause 11.

premiums adjustment contribution, in relation to an employer, means an amount equivalent to such part of the contributions, if any, payable by an insurer to the Insurance Fund under section 208 or 208AA of the Act as relates to the premium payable by the employer to the insurer.

regulations means regulations under the Act.

return to work incentive, in relation to a small employer, means an amount calculated in accordance with Schedule 11.

suitable employment has the same meaning as in section 32A of the Act.

Table A means the Table set out in Schedule 14.

Table B means the Table set out in Schedule 15.

Table C means the Table set out in Schedule 16.

the Act means the *Workers Compensation Act 1987*.

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

wages means wages as defined in section 174 (9) of the Act, but does not include a motor vehicle allowance or accommodation allowance to the extent that the allowance is required to be excluded from wages by clause 3.

- (2) The value of any amount of money calculated or included in a calculation under this Order is to be expressed in dollars.
- (3) In this Order, a reference to wages that are payable by an employer includes a reference to wages that have been paid by the employer.
- (4) In this Order, a reference to any GST that is payable by an employer includes a reference to GST that has been paid by the employer.

2 Meaning of experience-rated and small employer

- (1) In this Order:

experience-rated employer means an employer whose basic tariff premium for an insurance policy at the time at which the insurer demands a premium for the policy:

- (a) exceeds \$30,000 (where the period of insurance to which the premium relates is 12 months), or
- (b) would exceed \$30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

small employer means an employer whose basic tariff premium for an insurance policy at the time at which the insurer demands a premium for the policy:

- (a) does not exceed \$30,000 (where the period of insurance to which the premium relates is 12 months), or
- (b) would not exceed \$30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

- (2) If an employer is a member of a group, a reference to the basic tariff premium of the employer or to total wages payable by the employer to workers (however expressed) is taken to be a reference to the sum of the basic tariff premiums of all members of the group or to total wages payable to workers by all members of the group, respectively.

3 Extent to which motor vehicle and accommodation allowances to be excluded from wages

- (1) A motor vehicle allowance paid to a worker is to be excluded from wages for the purposes of this Order to the extent of an amount calculated at whichever of the following rates is applicable in the particular case:
 - (a) in the case of a worker paid an allowance under an award that specifies the allowance solely as a rate for each kilometre or part of a kilometre travelled by the worker in the course of the worker’s employment by means of a motor vehicle provided or maintained by the worker—the rate specified in the award,
 - (b) in the case of any other worker—77 cents for each kilometre or part of a kilometre travelled by the worker in the course of business journeys by means of a motor vehicle provided or maintained by the worker.

Note—

Where a worker is paid an allowance under an award that specifies the allowance wholly as a lump sum amount or partly as a lump sum amount and partly as a rate for each kilometre or part of a kilometre travelled by the worker in the course of the worker’s employment by means of a motor vehicle provided or maintained by the worker—the amount of allowance to be excluded from wages for the purposes of this Order is to be calculated in accordance with paragraph (b).

- (2) If the amount calculated in accordance with subclause (1) is greater than the amount actually paid to a worker as a motor vehicle allowance, only the amount actually paid is to be excluded from the calculation of wages.
- (3) The amount of motor vehicle allowance paid to a worker that is to be excluded from wages for the purposes of this Order is to be calculated using whichever of the following 2 methods the employer prefers:
 - (a) the method set out in clause 4 (the ***continuous recording calculation method***),
 - (b) the method set out in clause 5 (the ***averaging calculation method***).
- (4) An accommodation allowance paid to a worker is to be excluded from wages for the purposes of this Order to the extent of an amount calculated at whichever of the following rates is applicable in the particular case:
 - (a) in the case of a worker paid an allowance under an award that specifies the allowance as a rate for each night the worker is absent from the worker’s usual place of residence—the rate specified in the award,
 - (b) in the case of any other worker—\$253.25 for each night the worker is absent from the worker’s usual place of residence in the course of the worker’s employment.
- (5) If the amount calculated in accordance with subclause (4) is greater than the amount

actually paid to a worker as an accommodation allowance, only the amount actually paid is to be excluded from the calculation of wages.

(6) In this clause, **award** means:

- (a) an industrial instrument within the meaning of the *Industrial Relations Act 1996*,
or
- (b) any agreement with respect to salaries or wages entered into under the provisions of any other law of the State between an employer constituted by that law and an association or organisation representing a group or class of employees, or
- (c) an award, agreement or other instrument under the law of the Commonwealth or of another State or Territory, being an award, agreement or other instrument of a similar nature to an instrument or agreement referred to in paragraph (a) or (b).

4 Continuous recording calculation method

The continuous recording calculation method requires the following details to be kept and used for calculation:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the worker during a period of insurance by means of a motor vehicle provided or maintained by the worker,
- (b) the specific purpose for which each such business journey was taken,
- (c) the distance travelled by the worker during the period of insurance in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a).

5 Averaging calculation method

(1) The averaging calculation method requires the following details to be kept and used for calculation for the first period of insurance in which a worker's employer chooses to adopt that method:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the worker during the relevant 12-week period by means of a motor vehicle provided or maintained by the worker,
- (b) the specific purpose for which each such business journey was taken,
- (c) the distance travelled by the worker during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a),
- (d) the odometer readings at the beginning and end of the relevant 12-week period for each vehicle provided or maintained by the worker for the purpose of

undertaking business journeys,

- (e) the distance travelled by each such vehicle during the relevant 12-week period, calculated on the basis of the odometer readings referred to in paragraph (d),
 - (f) the distance travelled by the worker in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by that vehicle during that period,
 - (g) the distance travelled by the worker in the course of business journeys undertaken by means of each such vehicle during the period of insurance, calculated on the basis that the percentage for each such vehicle for the period of insurance is the same as the percentage for that vehicle for the relevant 12-week period.
- (2) After the first period of insurance in which odometer details are recorded in accordance with subclause (1), the calculation referred to in subclause (1) (g) is to be employed for the purpose of calculating the distance travelled by the worker in the course of business journeys undertaken by means of each vehicle referred to in subclause (1) during each of the next succeeding 4 periods of insurance, calculated on the basis that the percentage for each such vehicle for the period of insurance concerned is the same as the percentage for that vehicle for the relevant 12-week period.
- (3) After the first period of insurance in which odometer details are recorded in accordance with subclause (1), a worker's employer is not required to record the details referred to in that subclause for the worker for the next succeeding 4 periods of insurance unless:
- (a) the Authority serves a notice on the employer before the commencement of a period of insurance during those 4 periods directing the employer to keep the details referred to in subclause (1) for those periods, or
 - (b) the employer wishes to use the recording method referred to in this clause for one or more additional motor vehicles used by the worker in any period of insurance or for any other reason.
- (4) In a situation referred to in subclause (3) (b), a worker's employer may make a new record of odometer readings for a period of insurance in accordance with subclause (1) to replace the details previously recorded for the worker. The provisions of subclause (3) then apply in relation to the new record.
- (5) A worker's employer who has adopted and employed the method of recording referred to in this clause for a worker for 4 successive periods of insurance must, in the next succeeding period of insurance, make a fresh recording of the details specified in subclause (1) if the employer intends to continue to use the same method of recording for the worker.

- (6) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.
- (7) For the purposes of making the calculation referred to in subclause (1) (g) for the period of insurance in which this clause commences, a worker’s employer may estimate the distance travelled by a motor vehicle during any part of that period of insurance that occurs before that commencement.

6 Meaning of “relevant 12-week period”

- (1) In clause 5, **relevant 12-week period** means a continuous period of at least 12 weeks, selected by the worker’s employer, throughout which a motor vehicle is provided or maintained by a worker. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (2) The period may overlap the start or end of the period of insurance, so long as it includes part of the period.
- (3) If the averaging calculation method is used for 2 or more motor vehicles for the same period of insurance, the odometer readings for those motor vehicles must cover periods that are concurrent.

7 Replacing one motor vehicle with another motor vehicle

- (1) For the purposes of using the averaging calculation method, a worker’s employer may nominate one motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (3) An employer must record the nomination in writing in the period of insurance in which the nomination takes effect.
- (4) However, the Authority may allow an employer to record the nomination at a later time.

8 Classification of employer’s business

- (1) For the purposes of this Order, the classification applicable to an employer is the class in Column 1 of Table B to which the employer’s business corresponds. An employer’s business means the employer’s business or industrial activity.
- (2) An employer’s basic tariff premium is determined having regard to the rate in Column

3 of Table A for the classification applicable to the employer's business as determined in accordance with subclause (1).

- (3) An employer may carry on a single business or more than one business at the same time.
- (4) If an employer carries on a single business, the classification applicable to the business is that which most accurately describes the entire business of the employer. The entire business includes not only the operations and activities directly involved in the conduct of the business, but also all operations and activities incidental to the conduct of the business.
- (5) If an employer carries on more than one business, so that it can be said that the employer carries on separate and distinct businesses, subclause (4) applies to each such separate and distinct business.
- (6) Generally, businesses are not separate and distinct if the operations and activities carried on in those businesses are incidental to one another.
- (7) In determining whether businesses are separate and distinct (for classification purposes) it is relevant to take the following into account:
 - (a) the nature of the operations and activities (including incidental operations and activities) respectively carried on in the businesses,
 - (b) differences in the identity of the workers respectively engaged in the businesses (and in particular of the workers engaged in the manufacturing or industrial activities and operations),
 - (c) differences in locations of the businesses, for example, differences in locations may vary from sites far removed from each other, or separate floors in a given building, or even separate parts on the one floor level of a building (the important element in relation to location is that normally separate and distinct businesses have exclusive use of the particular area in which the operations and activities of the business are carried on).

9 Determination of wages—experience-rated employers

- (1) This clause applies in relation to experience-rated employers.
- (2) In this Order, a reference to wages, in relation to a period of insurance under a policy issued or to be issued to an employer or in relation to a period of 12 months ascertained by reference to any such period of insurance, is a reference:
 - (a) except as provided by paragraph (b), to a reasonable estimate of the monetary value of all wages (not including any wages to which Schedule 6 applies) payable to workers by the employer in respect of the period of insurance or the period of 12 months, as the case may be, as calculated by reference to the returns, if any,

furnished in accordance with the regulations by the employer to the insurer, or

- (b) where the monetary value of those wages (not including any wages to which Schedule 6 applies) has been ascertained—to the actual value of those wages.
- (3) If at any time the employer has failed to furnish the returns in respect of any relevant period of insurance and the monetary value of the wages concerned has not been ascertained, the estimate of the monetary value of those wages is taken to be such amount as is calculated by multiplying the monetary value (or reasonable estimate) of wages for the immediately preceding equivalent period of insurance by 1.3.
- (4) For the avoidance of doubt:
 - (a) in this Order, a reference to **wages payable to workers** includes wages payable to apprentices, and
 - (b) in subclause (3), the monetary value (or reasonable estimate) of wages for an employer for the immediately preceding equivalent period of insurance includes the monetary value (or reasonable estimate) of wages for the immediately preceding equivalent period of insurance paid to apprentices.

10 Determination of wages—small employers

- (1) This clause applies in relation to small employers.
- (2) In this Order, a reference to wages, in relation to a period of insurance under a policy issued or to be issued to an employer or in relation to a period of 12 months ascertained by reference to any such period of insurance, is a reference to:
 - (a) if there is no immediately preceding period of insurance—the reasonable estimate of the monetary value of the wages (not including any wages to which Schedule 6 applies) supplied to the insurer under clause 147 (1) of the *Workers Compensation Regulation 2010* for the relevant period of insurance, or
 - (b) if the small employer has, in accordance with clause 147 (3) of the *Workers Compensation Regulation 2010*, supplied to the insurer the actual wages paid by the employer during the employer’s second last period of insurance to workers employed by the employer—the actual monetary value of all wages (not including any wages to which Schedule 6 applies) paid to workers by the employer in respect of the second last period of insurance multiplied by 1.016, or
 - (c) otherwise—the monetary value of the wages (not including any wages to which Schedule 6 applies) used to calculate the employer’s premium in respect of the immediately preceding period of insurance, multiplied by 1.3.
- (3) For the purposes of subclause (2) (b) and (c), if the second last period of insurance or the immediately preceding period of insurance is less than 12 months, the monetary value of the wages concerned is to be adjusted to reflect the wages that would be

paid on a 12 monthly basis.

(4) For the avoidance of doubt:

- (a) in this Order, a reference to **wages payable to workers** includes wages payable to apprentices, and
- (b) in subclauses (2) and (3), the monetary value of wages for an employer for a period of insurance includes the monetary value of wages for that period of insurance paid to apprentices.

11 Meaning of “predecessor”

(1) For the purposes of this Order, a person is the **predecessor** of an employer if:

- (a) **Acquisition or otherwise gaining possession of predecessor’s business**
the employer has acquired or otherwise come into the possession of the business of the person, or
- (b) **Transfer of all or majority of predecessor’s workforce**

the employer has, during any policy period, employed workers who at any time constituted all or a majority of the workers employed, during any policy period, by the person and those workers have carried out activities or performed services for the employer that were the same or similar to activities carried out or services performed by those workers for the person.

Note—

The claims and basic tariff premium history of an employer’s predecessor are used in the calculation of the employer’s workers compensation insurance premium—see clauses 1 (4) and 5 of Schedule 4 to this Order.

- (2) Subclause (1) (a) applies whether the business acquired is the whole or main part of the business of the person or is the whole or main part of a separate and distinct business of the person, and whether or not the business acquired is carried on at the same location.
- (3) Subclause (1) (b) applies whether or not the activities carried out or services performed for the employer were carried out or performed at the same location as those carried out or performed for the person.
- (4) In this clause, **business** has the same meaning as in Division 2B of Part 7 of the Act.

Schedule 2 Application

(Clause 10)

1 Policies to which Order applies

- (1) This Order applies to and in respect of policies of insurance that are to be or have

been issued or renewed so as to take effect at or after 4 pm on 30 June 2015 and before 4 pm on 30 June 2016.

- (2) If, before 4 pm on 30 June 2016, an insurance premiums order has not been made in respect of policies of insurance taking effect at or after that time, this Order applies to and in respect of those policies pending the making of such an order.

2 Policies exempt from Order

- (1) This Order does not apply to a policy of insurance issued or renewed by a specialised insurer that is exempted from insurance premiums orders by clause 165 of the [Workers Compensation Regulation 2010](#).
- (2) Despite subclause (1):
- (a) clause 5 of this Order applies to policies of insurance issued or renewed by a specialised insurer, and
 - (b) clause 8 (b) of this Order applies to policies of insurance issued or renewed by Racing NSW as a specialised insurer.

Schedule 3 Basic tariff premium

(Clause 3)

1 General

- (1) The basic tariff premium (**BTP**) for an employer is to be calculated in accordance with the following formula:

$$(W_a \times R_a) + (W_b \times R_b) + \dots (W_n \times R_n)$$

where:

W_a, W_b...W_n are each a part of the total wages payable to workers by the employer in respect of the period of insurance for which the premium is to be calculated, being a part of the total wages attributable to a class appearing in Column 1 of Table A applicable to the employer.

R_a, R_b...R_n are each a percentage rate specified in Column 3 of Table A that corresponds with a class applicable to the employer, being a class appearing in Column 1 of Table A opposite the percentage rate.

- (2) For the purposes of subclause (1), the classifications applicable to an employer and the part of total wages payable by an employer that is attributable to any such classification are to be as determined by reference to returns, if any, furnished in accordance with the regulations by the employer to the insurer, or by other information from the employer.

2 Exceptions

- (1) If the policy concerned relates to per capita rates in respect of some or all workers, the relevant numbers by which those rates are to be multiplied (for example, the number of boxing matches or taxi licence plates) are to be substituted for wages in respect of those workers to determine $W_a, W_b \dots W_n$ in the formula in clause 1.
- (2) If the employer does not supply sufficient information to enable the business to be classified, the business is to be classified in the class with the highest percentage rate that appears to be applicable to the business. The business may be reclassified to a class having a lower percentage rate when sufficient information is supplied.

Schedule 4 Claims performance adjustment

(Clause 3)

1 General

- (1) The claims performance adjustment (**CPA**) for an employer is the rate specified for the employer in Table C having regard to the basic tariff premium (**BTP**) and claims performance rate (**CPR**) determined in respect of the employer.
- (2) In this clause:

basic tariff premium (BTP) is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3 (or, if the period of insurance is to be less than 12 months, the basic tariff premium that would be calculated if the period of insurance were to be 12 months). If an employer is a member of a group, a reference to the basic tariff premium of the employer is taken to be a reference to the sum of the basic tariff premiums of all members of the group.

BTP₁, BTP₂, and BTP₃ are, respectively, the employer's individual basic tariff premium in respect of the last, second last and third last period of 12 consecutive months that occurred before the commencement of the period of insurance (or, if a prior period of insurance was less than 12 months the basic tariff premium that would be calculated if the period of insurance was 12 months).

claim performance rate (CPR) is the employer's claim performance rate calculated using the following formula:

$$CPR = \frac{CPM}{SPM} \times \frac{100}{1}$$

CPM is the employer's claim performance measure calculated using the following formula:

$$CPM = \frac{C_1 + C_2 + C_3}{BTP_1 + BTP_2 + BTP_3} \times \frac{100}{1}$$

C₁, **C₂** and **C₃** are, respectively, the totals of the cost of claims for the employer in respect of the last, second last and third last period of 12 consecutive months that occurred before the commencement of the period of insurance (not including the cost of any claims under sections 10 (Journey claims) and 11 (Recess claims) of the Act).

SPM is the scheme performance measure determined as follows:

- (a) if the employer has been insured under a policy or policies for the period of 36 months or longer immediately preceding the commencement of the period of insurance for which the premium is to be calculated—4.55%,
 - (b) if the employer has been insured under a policy or policies for a period of 24 months or longer but less than 36 months immediately preceding the commencement of the period of insurance for which the premium is to be calculated—3.51%,
 - (c) if the employer has been insured under a policy or policies for a period of 12 months or longer but less than 24 months immediately preceding the commencement of the period of insurance for which the premium is to be calculated—2.56%,
 - (d) if the employer has not been insured under a policy or policies prior to commencement of the period of insurance for which the premium is to be calculated or has been insured under a policy or policies for a period of less than 12 months immediately preceding that commencement—0%.
- (3) If an employer's policy is renewed and the employer does not supply the insurer with a notice with respect to wages paid during the last, second last or third last periods of insurance preceding that renewal (as required by clause 147 (3) or (3A) of the [Workers Compensation Regulation 2010](#)), the insurer may, for the purpose of calculating the CPM for the renewed policy, determine the amount of BTP_1 , BTP_2 and BTP_3 in this clause to be the amount determined as the sum of the basic tariff premium for the employer for the renewal or adjustment of the employer's policies, as the case may be, in respect of the last, second last or third last periods of 12 consecutive months that occurred before the commencement of the period of insurance.
- (4) If during any past period referred to in C_1 , C_2 , C_3 , BTP_1 , BTP_2 or BTP_3 in a formula in this clause a predecessor of the employer was insured under a policy or policies:
- (a) the cost of claims for the employer during that period includes, for the purposes of C_1 , C_2 and C_3 , the cost of claims for the predecessor in respect of the relevant business of the predecessor, and
 - (b) the basic tariff premium for the employer during that period includes, for the purposes of BTP_1 , BTP_2 and BTP_3 , the basic tariff premium for the predecessor in

respect of the relevant business of the predecessor.

2 Definition

In this Schedule, **cost of claims** has the same meaning as in clause 7 of this Order.

3 Claims performance measure for members of a group where another member ceases operating

(1) Despite clause 1 of this Schedule, if:

- (a) an employer (**the continuing employer**) is or was a member of a group during any of the relevant policy periods, and
- (b) during a relevant policy period, another member of the group becomes or became a departing member, and
- (c) the departing member incurred claims that would be used to calculate the departing members premium in C_1 , C_2 or C_3 ,

the claims performance measure (**CPM**) for the continuing employer is to be calculated using the applicable formula in clause 1, but modified as follows:

C_1 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$C_1 = C_{1CE} + G_a \times C_{1DM}$$

C_2 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$C_2 = C_{2CE} + G_a \times C_{2DM}$$

C_3 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$C_3 = C_{3CE} + G_a \times C_{3DM}$$

BTP_1 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$BTP_1 = BTP_{1CE} + G_a \times BTP_{1DM}$$

BTP_2 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$BTP_2 = BTP_{2CE} + G_a \times BTP_{2DM}$$

BTP₃, for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$BTP_3 = BTP_{3CE} + G_a \times BTP_{3DM}$$

where:

G_a is the continuing employer's proportionate allocation of the departing member's cost of claims and wages and is calculated using the following formula:

$$G_a = \frac{BTP_{CE}}{BTP_G - BTP_{DM}}$$

C_{1CE} is C₁ as calculated for the continuing employer using clause 1.

C_{1DM} is C₁ as calculated for the departing member using clause 1.

C_{2CE} is C₂ as calculated for the continuing employer using clause 1.

C_{2DM} is C₂ as calculated for the departing member using clause 1.

C_{3CE} is C₃ as calculated for the continuing employer using clause 1.

C_{3DM} is C₃ as calculated for the departing member using clause 1.

departing member, in relation to a continuing employer's group, means an employer who:

- (a) is or was a member of that group, and
- (b) held a policy of insurance under the Act that has either expired or been cancelled, and
- (c) has not, in relation to that expiry or cancellation, become a predecessor of any other employer.

BTP_{CE} is the basic tariff premium of the continuing employer.

BTP_{DM} is the basic tariff premium of the departing member.

BTP_G is the sum of the basic tariff premiums of all members of the group (including the departing member).

BTP_{1CE} is BTP₁ as calculated for the continuing employer using clause 1.

BTP_{1DM} is BTP₁ as calculated for the departing member using clause 1.

BTP_{2CE} is BTP_2 as calculated for the continuing employer using clause 1.

BTP_{2DM} is BTP_2 as calculated for the departing member using clause 1.

BTP_{3CE} is BTP_3 as calculated for the continuing employer using clause 1.

BTP_{3DM} is BTP_3 as calculated for the departing member using clause 1.

- (2) In this clause, the ***relevant policy periods*** are the period of insurance for which the premium is to be calculated and the last, second last and third last periods of 12 consecutive months that occurred before the commencement of that period of insurance.

4 Employers who were previously self-insurers

- (1) If an employer was not insured for the period of 3 years referred to in clause 1, because the employer was a self-insurer during the whole or any part of that period, any formula in that clause applies as if the employer had been insured under a policy (and supplied particulars) during the whole of that period.
- (2) If an employer that is a member of a group was not insured for the period of 3 years referred to in clause 3, because the employer was a self-insurer during the whole or any part of that period, any formula in that clause applies as if the employer had been insured under a policy (and supplied particulars) during the whole of that period.

5 Employers who have a predecessor

- (1) The period referred to in clause 1 during which an employer has been insured under a policy or policies and supplied particulars of claims includes any period during which a predecessor of the employer has been so insured and supplied particulars.
- (2) The period referred to in clause 3 during which an employer has been insured under a policy or policies and every member of the employer's group supplied particulars of claims includes any period during which a predecessor of the employer has been so insured and supplied particulars.

Schedule 5 Minimum premium

(Clause 10)

1 Minimum premium payable

- (1) The minimum premium in respect of any policy is \$175.
- (2) If the premium payable in respect of a policy would (but for this Schedule) be less than the minimum premium in respect of the policy, the amount of the premium is to be increased to that minimum premium.
- (3) A reference in subclause (2) to the premium that would (but for this Schedule) be

payable in respect of a policy includes a reference to a premium as discounted under clause 4 of this Order.

Schedule 6 Reduction of premium for employers of previously injured workers etc

(Clause 10)

1 Premium to be reduced

Any premium calculated in accordance with the other provisions of this Order is to be reduced in accordance with this Schedule.

2 Exclusion of certain wages from calculation of premium

Any such premium is to be reduced by excluding wages to which this Schedule applies from the calculation of the amount of the premium.

3 Wages to which this Schedule applies

- (1) This Schedule applies to wages payable by an employer in respect of the first 24 months of employment of any worker who is first employed by the employer (for a minimum period of employment of 12 continuous weeks) on or after 1 July 1992 but only if:
 - (a) the worker is partially incapacitated for work as a result of a 1987 Act injury (whether received before, on or after 1 July 1992) and is no longer employed by a previous employer who employed the worker at the time of the injury, or
 - (b) the worker has as a result of a 1987 Act injury (whether received before, on or after 1 July 1992) been totally or partially incapacitated for work for a period of at least 12 weeks, is no longer employed by a previous employer who employed the worker at the time of the injury and has been continuously unemployed since that period of incapacity.
- (2) However, this Schedule does not apply to any such wages unless:
 - (a) an application for a premium reduction in respect of those wages is made by the relevant employer in accordance with any guidelines under this Schedule, and
 - (b) any other relevant requirements of the Authority are satisfied.

4 Guidelines—Application for reduction of premium etc

- (1) The Authority may issue guidelines specifying the method of applying for a premium reduction under this Schedule, including:
 - (a) the form and the manner of making an application, and
 - (b) any documents relating to the application that the employer must attach to it.

- (2) Those guidelines may also specify the circumstances in which periods of employment or unemployment are to be regarded as continuous for the purposes of clause 3 (1).

5 Interpretation

In this Schedule:

- (a) **employer** does not include a self-insurer, and
- (b) a reference, in relation to a worker, to a **1987 Act injury** is a reference to an injury received by the worker after the commencement of the Act.

Schedule 7 Mine Safety Fund premium adjustment

(Clause 3)

1 General

The Mine Safety Fund premium adjustment (**M**) is to be calculated in accordance with the following formula:

$$M = (W_a + W_b + \dots W_n) \times R_{MSF}$$

where:

W_a, W_b...W_n are each a part of the total wages payable to workers by the employer in respect of the period of insurance for which the premium is to be calculated, being a part of the total wages attributable to a class appearing in Division B of Table B (that is, classes 120000 to 152000) applicable to the employer.

R_{MSF} is 1.177%.

Schedule 8 Apprentice incentive scheme

(Clause 3)

1 General

- (1) The apprentice incentive amount (**A**) for an employer is to be calculated in accordance with the following formula:

$$(A_a \times R_a) + (A_b \times R_b) + \dots (A_n \times R_n)$$

where:

A_a, A_b...A_n are each a part of the total wages payable to apprentices under apprenticeship contracts by the employer in respect of the period of insurance for which the premium is to be calculated, being a part of the total wages attributable to a class appearing in Column 1 of Table A applicable to the employer.

Ra, Rb...Rn are each a percentage rate specified in Column 3 of Table A that corresponds with a class applicable to the employer, being a class appearing in Column 1 of Table A opposite the percentage rate.

- (2) For the purposes of subclause (1), the classifications applicable to an employer and the part of total wages payable by an employer that is attributable to any such classification are to be as determined by reference to returns, if any, furnished in accordance with the regulations by the employer to the insurer, or by other information from the employer.
- (3) In this clause, **apprenticeship contract** has the same meaning as in the [Apprenticeship and Traineeship Act 2001](#).

2 Exceptions

- (1) If the employer does not supply sufficient information to enable the business to be classified, the business is to be classified in the class with the highest percentage rate that appears to be applicable to the business. The business may be reclassified to a class having a lower percentage rate when sufficient information is supplied.
- (2) If the employer has not supplied a notice with respect to wages (as required by clause 147 of the [Workers Compensation Regulation 2010](#)) in respect of any relevant period of insurance, the apprentice incentive amount (**A**) is taken to be zero for the purposes of the calculation of the employer's premium. The apprentice incentive amount (**A**) for an employer's premium may be recalculated when the required notice as to wages has been supplied.
- (3) Despite clause 1, in relation to a renewed policy of insurance, the apprentice incentive amount (**A**) for a small employer is taken, for the purposes of the calculation of the employer's premium, to be zero until the small employer has supplied a notice with respect to wages:
 - (a) referred to in subclause (4), or
 - (b) as required by clause 147 (3) of the [Workers Compensation Regulation 2010](#).

The apprentice incentive amount (**A**) for a small employer's premium is to be recalculated when any such notice as to wages has been supplied.

- (4) For the purposes of subclause (3), a small employer may, at any time before or during a period of insurance, supply the insurer concerned with a notice in the form approved by the Authority, duly completed, which contains a reasonable estimate of the wages that will be payable by the employer during the period of insurance to apprentices employed by the employer.

Schedule 9 Dust diseases contribution

(Clause 3)

1 General

- (1) The dust diseases contribution (**D**) for an employer is to be calculated in accordance with the following formula:

$$(W_a \times DD_a) + (W_b \times DD_b) + \dots (W_n \times DD_n)$$

where:

W_a, W_b...W_n are each a part of the total wages payable to workers by the employer in respect of the period of insurance for which the premium is to be calculated, being a part of the total wages attributable to a class appearing in Column 1 of Table A applicable to the employer.

DD_a, DD_b...DD_n are each a percentage rate specified in Column 4 of Table A that corresponds with a class applicable to the employer, being a class appearing in Column 1 of Table A opposite the percentage rate.

- (2) Despite subclause (1), if an employer is engaged in the class of employment specified in paragraph D (12) of the determination made by the Workers' Compensation (Dust Diseases) Board under section 6 (3) of the *Workers' Compensation (Dust Diseases) Act 1942*, published in Gazette No 64 of 11 May 1979 at page 2235, the dust diseases contribution (**D**) for the employer is to be calculated as follows:

$$D = W \times DD$$

where:

W is the total wages payable to workers by the employer in respect of the period of insurance for which the premium is to be calculated.

DD is 4.4%.

- (3) For the purposes of subclauses (1) and (2), the classifications applicable to an employer and the part of total wages payable by an employer that is attributable to any such classification are to be as determined by reference to returns, if any, furnished in accordance with the regulations by the employer to the insurer, or to other information from the employer.

2 Exception

If the employer does not supply sufficient information to enable the business to be classified, the business is to be classified in the class with the highest percentage rate that appears to be applicable to the business. The business may be reclassified to a class having a lower percentage rate when sufficient information is supplied.

Schedule 10 Employer safety incentive

(Clause 3)

1 General

The employer safety incentive (**ESI**) is to be calculated as follows:

(a) for a small employer:

- (i) if a claim was made in relation to an injury that occurred during the period of insurance and the injured worker did not return to suitable employment within 4 weeks of the date of the injury (whether at the worker's previous place of employment or another place of employment):

$$ESI = 0$$

- (ii) in any other case:

$$ESI = BTP \times 10\%$$

(b) for an experience-rated employer:

$$ESI = BTP \times 10\%$$

where:

BTP is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3.

Schedule 11 Return to work incentive

(Clause 3)

1 General

The return to work incentive (**RTWI**) for a small employer is to be calculated as follows:

- (a) for the purpose of calculating the initial premium payable before the expiration of the period of insurance for which the premium is to be calculated:

$$RTWI = 0$$

(b) after the period of insurance for which the premium is to be calculated has expired:

- (i) if:

(A) $ESI > 0$, or

- (B) a claim was made in relation to an injury that occurred during the period of insurance and the injured worker did not return to suitable employment within 13 weeks of the date of the injury (whether at the worker's previous place of employment or another place of employment):

$$RTWI = 0$$

- (ii) in any other case:

$$RTWI = BTP \times 10\%$$

where:

ESI is the employer safety incentive, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 10.

BTP is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3.

Schedule 12 Employer safety reward

(Clause 3)

1 General

The employer safety reward (**ESR**) is to be calculated as follows:

- (a) for the purpose of calculating the initial premium payable before the expiration of the period of insurance for which the premium is to be calculated:

$$ESR = 0$$

- (b) after the period of insurance for which the premium is to be calculated has expired:

- (i) if:

(A) a claim was made in relation to an injury that occurred during the period of insurance and the cost of that claim exceeded 0, or

(B) a claim was made in relation to an injury that occurred in respect of the last, second last and third last period of 12 consecutive months that occurred before the commencement of the period of insurance and the cost of that claim exceeded 0:

$$ESR = 0$$

- (ii) in any other case:

$$ESR = (BTP - A) \times 5\%$$

where:

BTP is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3.

A is the apprentice incentive amount for the employer, calculated with respect to the period of insurance in accordance with Schedule 8.

2 Definition

In this Schedule, **cost of claims** has the same meaning as in clause 7 of this Order.

Schedule 13 Performance discount

(Clause 3)

1 General

The performance discount (**PD**) is to be calculated as follows:

- (a) for the purpose of calculating the initial premium payable before the expiration of the period of insurance for which the premium is to be calculated:

$$PD = 0$$

- (b) after the period of insurance for which the premium is to be calculated has expired:

$$PD = (BTP - A) \times PD\%$$

where:

BTP is the basic tariff premium for the employer, calculated with respect to the period of insurance in accordance with Schedule 3.

A is the apprentice incentive amount for the employer, calculated with respect to the period of insurance in accordance with Schedule 8.

PD% is the performance discount percentage rate determined by the Governor, on the recommendation of the Authority, and notified in the Gazette.

Editorial note—

See Gazette No 54 of 29.6.2016, p 1845.

Schedule 14 Table A

Editorial note—

For the text of Schedule 14 see Gazette No 47 of 5 June 2015, p 1304.

Schedule 15 Table B

Editorial note—

For the text of Schedule 15 see Gazette No 47 of 5 June 2015, p 1316.

Schedule 16 Table C

Editorial note—

For the text of Schedule 16 see Gazette No 47 of 5 June 2015, p 1567.