

# Workers Compensation (Insurance Premiums) Regulation 1995

[1995-542]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Regulation was repealed by the [Subordinate Legislation Act 1989 No 146](#), sec 10 (2) with effect from 1.9.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Workers Compensation (Insurance Premiums) Regulation 1995



New South Wales

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# Workers Compensation (Insurance Premiums) Regulation 1995



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *Workers Compensation (Insurance Premiums) Regulation 1995*.

### 2 Commencement

This Regulation commences on 1 September 1995.

### 3 Definitions

In this Regulation:

**approved** means approved by the Authority.

**Authority** means the WorkCover Authority constituted under the *WorkCover Administration Act 1989*.

**category A employer**, in relation to a policy, means an employer whose basic tariff premium (within the meaning of the insurance premiums order for the time being in force) for the policy at the time at which the insurer first demands a premium for the policy would exceed \$3,000, assuming the period of insurance to which the premium relates to be 12 months (whether or not that period of insurance is in fact 12 months).

**category B employer** means an employer who is not a category A employer.

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

**cost of claims**, in relation to the calculation of a premium for the issue or renewal of an employer's policy, means:

- (a) except as provided by paragraph (b), the cost of claims for an injury year (within the meaning of Part 3) for the employer, being that cost as at the commencement of the period of insurance to which the premium relates, or

(b) after that period of insurance has expired, the cost of claims for an injury year (within the meaning of that Part) for the employer, being that cost as at the expiration of that period.

**decreasing adjustment** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**employer** includes a person who proposes to become an employer.

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

**input tax credit entitlement**, in relation to an employer, means the amount of input tax credit that may be claimed by the employer in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth in respect of the issue or renewal of a policy of insurance expressed as a percentage of the GST payable by the employer in respect of the issue or renewal of that policy.

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

**period of insurance**, in relation to a policy, means a period for which an insurer assumes risk under the policy, being a period which 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.

**the Act** or **the 1987 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.

#### 4 Meaning of “injury year”

In this Regulation, a reference to an injury year, when made in relation to the calculation of a premium for the issue or renewal of a policy, is a reference to any of the successive periods of 12 consecutive months occurring before the commencement of the period of insurance for which the premium is or is to be calculated.

#### 5 Non wages-based calculation of premium

If the manner of calculation of the premium payable for a policy of insurance is not based on the wages payable to workers:

(a) a reference in this Regulation to wages is to be read as a reference to that other basis of calculation of the premium, and

- (b) the form of any notice or declaration under this Regulation is to be appropriately modified having regard to the manner of calculation of the premium.

## **Part 2 Declaration of wages**

### **6 Employer to supply insurer with return relating to wages**

- (1) An employer must, as soon as practicable (but not later than 2 months) after:

- (a) making an application to an insurer for the issue of a policy, or

- (b) the renewal of a policy,

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 relevant period of insurance to workers employed by the employer.

- (2) An employer must, not later than 2 months after the end of the relevant period of insurance relating to a policy, supply the insurer who issued or renewed the policy with a notice in the approved form, duly completed, which contains a full and correct declaration of the wages that were actually paid by the employer during that period of insurance to workers employed by the employer.

### **7 Declaration accompanying return**

When an employer supplies an insurer with a notice under clause 6 (being a notice which relates to a period of insurance which has expired) the employer must also supply the insurer with:

- (a) if no accountant, registered tax agent or registered company auditor was, during that period, engaged as a consultant to or in a similar independent capacity by the employer—a declaration in the approved form, or
- (b) in any other case—a declaration in the approved form, to which is attached a report of a tax agent or registered company auditor as set forth in the attachment to that form.

### **8 Experience premium return**

For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance, an insurer to whom the employer has applied for the issue or renewal of a policy may, by notice in writing served on the employer not later than 1 month after the commencement or end of the period of insurance, require the employer to furnish the insurer, within 28 days of service of the notice:

- (a) with a declaration in the approved form, and
- (b) a statement setting forth (with respect to the last 2 injury years which occurred before the commencement of the period of insurance) the particulars relating to wages



required by the attachment to that form to be inserted in it.

## **9 Offence by employer**

- (1) An employer who, without reasonable excuse, refuses or fails to comply with clause 6 or 7 or with a requirement made in accordance with clause 8 is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) (Repealed)

## **Part 2B Notice of input tax credit entitlement**

### **9A Employer to give insurer notice of input tax credit entitlement**

For the purpose of enabling a premium to be calculated, an employer must, prior to the commencement of the period of insurance for which the premium is to be calculated, notify the insurer concerned in writing of the employer's input tax credit entitlement in relation to the payment of the premium for that policy of insurance.

## **Part 3 Certification of cost of claims**

### **10 Definition**

In this Part:

**cost of claims**, in relation to an injury year or a period of insurance, means the total of the following costs:

- (a) 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, 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:
- (i) in relation to a policy issued or renewed so as to take effect at or after 4 pm on 30 June 1988 (other than a policy to which subparagraph (ii) applies), any claim under section 10 (Journey claims) of the Act, or
  - (ii) in relation to a policy issued or renewed so as to take effect at or after 4 pm on 30 June 1995, any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act,
- (b) 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.

## 10A Prevention of double allowance for provisional compensation payments

(1) In this clause:

**provisional compensation payment** means provisional weekly payment of compensation or provisional payment of medical expenses compensation, under Part 3 of Chapter 7 of the 1998 Act, on the basis of provisional acceptance of liability to a worker.

(2) If payments are made in respect of a claim pursuant to the Act and provisional compensation payments have been made in respect of the injury concerned:

- (a) the provisional compensation payments are, for the purposes of determining the cost of the claim, taken to be payments made by the insurer in respect of the claim pursuant to the Act and are to be included as such under clause 11, and
- (b) clause 11A does not apply to those provisional compensation payments, and
- (c) the cost of those provisional compensation payments is not to be included in the total of the costs of provisional compensation payments under paragraph (b) of the definition of **cost of claims** in clause 10.

## 11 Cost of an individual claim

(1) For the purposes of this Regulation, the cost of an individual claim is (except as provided by subclause (2)) the sum of the following:

- (a) the payments, if any, made by the insurer in respect of the claim pursuant to the Act or the former Act,
- (b) 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,
- (c) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the claim,
- (d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs which were paid to the claimant or incurred by the insurer on the insurer's own account,
- (e) the most accurate estimation for the time being of the insurer's outstanding liability reasonably likely to arise out of the claim,

whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability which will arise) 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).

(2) However, the cost of an individual claim:

- (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
- (b) is to be reduced by the amounts, if any, which have been recovered or 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
- (c) is to be reduced by the first \$500 of the claim or, if the cost of the claim is less than \$500, is to be reduced by that lesser cost, and
- (d) does not include any amount paid or payable under section 64A of the Act (Compensation for cost of interpreter services), and
- (e) does not include any amount which section 54 (4) (b) of the 1998 Act (Second-injury scheme) requires to be excluded from the claims experience of the employer, and
- (f) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of the individual claim under subclause (1), pursuant to the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth.

(3) (Repealed)

(4) In this clause, references to the insurer's outstanding liability reasonably likely to arise out of the claim are references to the amount calculated to be sufficient to meet all reasonably likely future payments in respect of the claim, including adjustments (at such rates, if any, as the Authority from time to time determines) to take account of expected future earnings on investments and expected future inflation or deflation on that amount.

(5) For the purpose of this clause, in the case of a claim in respect of the death of or injury to a person caused by or arising out of a motor accident as defined in the [Motor Accidents Act 1988](#):

- (a) the insurer's liability to indemnify an employer in respect of the employer's liability to the claimant independently of the Act is taken to be limited to the amount of damages (if any) that would be payable if Division 3 of Part 5 of the [Workers Compensation Act 1987](#) applied to the award of damages concerned, and

(b) the insurer is taken not to be liable for legal costs connected with proceedings under the *Motor Accidents Compensation Act 1999* if damages would not have been payable if that Division applied to that award.

(6) If the cost of an individual claim exceeds the large claim limit which applied when the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received), the cost of the individual claim is the amount of that large claim limit.

(7) For the purposes of subclause (6), the large claim limit specified in Column 2 of the Table to this clause applies to an injury which was received or is deemed to have been received during a year specified in Column 1 of that Table in relation to that limit.

**Table Large claim limits**

<b>Column 1</b> <b>Period of 12 months commencing with:</b>	<b>Column 2</b> <b>Large claim limit</b>
30 June 1985	\$100,000
30 June 1986	\$200,000
30 June 1987 or 30 June of the years 1988 to 1994	\$100,000
30 June 1995 or 30 June of any subsequent year	\$150,000

**11A Cost of provisional payments of compensation**

(1) For the purposes of this Regulation, the cost of payment of provisional weekly payments of compensation and provisional payment of medical expenses compensation, if any, with respect to a particular injury is (except as provided by subclause (2)) the sum of the following:

- (a) the sum of the payments of provisional weekly payments of compensation and provisional medical expenses compensation, if any, made by the insurer in respect of the injury pursuant to the 1998 Act,
- (b) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the injury,
- (c) legal costs, if any, paid by the insurer in relation to the investigation of the injury, the determination of liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation and otherwise in complying with Divisions 1 and 3 of Part 3 of Chapter 7 of the 1998 Act,
- (d) the most accurate estimation for the time being of the insurer's outstanding liability to make provisional weekly payments of compensation and provisional

payment of medical expenses compensation, if any, with respect to the injury, whether the payments were made or the fees, expenses or costs were paid (or the estimation relates to liability that will arise) during or after the injury year or period of insurance in which the injury was received (or is deemed by the Act to have been received).

- (2) However, the cost of provisional weekly payments of compensation and provisional payment of medical expenses compensation with respect to a particular injury:
- (a) does not include any amount calculated by reference to the insurer's costs of administration or profit, and
  - (b) is to be reduced by the amounts, if any, which have been recovered or are recoverable by the insurer from any source, other than an amount recovered or recoverable under section 160 of the 1987 Act, from the Insurers' Contribution Fund or pursuant to a policy of reinsurance, and
  - (b1) is to be reduced by the first \$500 of the provisional payments or, if the cost of the payments is less than \$500, is to be reduced by that lesser cost, and
  - (c) does not include any amount paid or payable under section 64A (Compensation for cost of interpreter services) of the 1987 Act, and
  - (c1) 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, and
  - (d) is to be reduced by an amount that is the most accurate estimation for the time being by the insurer of the amount of any input tax credit or decreasing adjustment that may be claimed or has been claimed by the insurer in respect of the payments, fees, expenses or costs included in the cost of provisional weekly payments of compensation or provisional payment of medical expenses compensation under subclause (1), pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.
- (3) In this clause, references to the insurer's outstanding liability to make provisional weekly payments of compensation or provisional payment of medical expenses compensation with respect to an injury are references to the amount calculated to be sufficient to meet all reasonably likely future provisional payments of weekly compensation or medical expenses compensation in respect of the injury.

## **12 Certificates relating to cost of claims**

- (1) For the purpose of ascertaining the premium payable by an employer in respect of a period of insurance:
- (a) an employer to whom a policy has been issued by an insurer, or

(b) another insurer,

may, by notice in writing served on the insurer who issued the policy not later than 1 month after the commencement of the period of insurance, require the insurer who issued the policy to furnish the employer or other insurer, within 21 days of service of the notice, with a certificate in the approved form, specifying (with respect to the whole or any part of the 2 last injury years which occurred or will have occurred before the commencement of the period of insurance) the particulars relating to costs of claims required by the form to be inserted in it.

(2) An insurer who, without reasonable excuse:

(a) fails to comply with a requirement made in accordance with subclause (1), or

(b) in purported compliance with any such requirement, furnishes 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,

is guilty of an offence.

Maximum penalty: 20 penalty units.

### **13 Effect of certificate**

(1) Where an insurer has, in accordance with clause 12, furnished a certificate to an employer or another insurer for the purpose of ascertainment of the premium payable in respect of a period of insurance, the particulars relating to costs of claims specified in the last or only certificate so furnished are binding on the employer and any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance, except as provided by subclauses (2) and (3).

(2) Those particulars are not binding on the employer to the extent of any inconsistency with a determination of the Authority under section 170 (Action by employer where premium not in accordance with insurance premiums order) of the 1987 Act.

(3) If an insurer (other than the insurer who furnished the certificate) does not agree with any of those particulars and applies to the Authority for a variation of those particulars (and the application is not withdrawn or, in the opinion of the Authority, abandoned), the particulars relating to costs of claims specified in the certificate as confirmed or varied by the Authority are binding on any insurer for the purpose of calculation at any time of those costs of claims as at the commencement of that period of insurance.

### **14 Employers who were previously self-insurers**

(1) If an employer:

- (a) makes an application to an insurer for the issue or renewal of a policy, and
- (b) was a self-insurer during any part of the last 2 injury years occurring before the proposed period of insurance,

the cost of claims in relation to the period as a self-insurer is to be calculated (subject to any relevant determination of the Authority) as if the employer had been insured under a policy in respect of that period.

- (2) The provisions of this Part relating to insurers apply (subject to such modifications and exceptions as the Authority may determine) to such an employer in respect of the period as a self-insurer.

## **Part 4 Demand for premium**

### **15 Notice of premium calculation**

- (1) An insurer may not demand a premium for the issue or renewal of a policy to which an insurance premiums order applies unless the insurer has sent or sends at the time to the employer a notice in the approved form, duly completed, relating to the calculation of the premium in respect of that employer.
- (2) The sending by an insurer of a notice referred to in subclause (1) to a broker or an intermediary or an agent of an employer (whether or not the notice is also addressed to the employer) does not constitute sending of the notice to the employer for the purposes of that subclause, but nothing in this subclause prevents the sending of any such notice to an employer by a postal or courier service.

## **Part 5 Procedure before Authority relating to insurance premiums**

### **16 Applications**

An application to the Authority under section 170 of the 1987 Act or clause 13 of this Regulation must, unless the Authority otherwise directs, be made in a form approved by the Authority and lodged at the office of the Authority.

### **17 Answer**

If a respondent who has notice of the application wishes to make representations to the Authority in relation to the application, the respondent must lodge those representations with the Authority in writing (unless the Authority otherwise directs).

### **18 Decision of Authority**

The Authority:

- (a) is to consider the application and may have regard to such representations as it thinks fit, and

- (b) is to determine the matter to which the application relates, and
- (c) is to inform the applicant and the respondent of its decision in such manner as it thinks fit.

## **19 Procedure generally**

The Authority may, in its discretion:

- (a) permit an actuary, auditor, accountant, insurance authority, medical referee or other person to sit with it as an assessor, and
- (b) obtain and consider a report from any insurer, self-insurer or any other person referred to in paragraph (a), in connection with its dealing with an application referred to in clause 16 or any other matter.

## **20, 21 (Repealed)**

## **Part 6 Policies exempt from insurance premiums orders**

### **22 Further policies exempt from order—unregulated premiums**

- (1) Policies issued or renewed by a specialised insurer are exempted from insurance premiums orders.
- (2) The exemption under subclause (1) is in addition to the exemptions provided by section 168 (4) (b) of the Act.

## **Part 7 Payment of premiums by instalments**

### **23 Policies under which premiums may be paid by instalments**

- (1) An employer may elect to pay the premiums under a policy of insurance by instalments if:
  - (a) the period of insurance is 12 months, and
  - (b) the employer is a category A employer for the purposes of the policy, and
  - (c) 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 within 1 month after the commencement of the period of insurance constitutes an election to pay by instalments.
- (3) For the purposes of this Part, the **required instalments deposit** is, subject to clause 24 (3), an amount equal to one-third of the estimated premium for the policy.



## **24 Number, size and times for payment of instalments**

- (1) If an employer elects to pay the premiums under a policy of insurance by instalments and pays the required instalments deposit within 1 month after the commencement of the period of insurance, the premiums are payable in instalments as follows:

### **Instalment No 1**

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 exceeds the amount paid as the required instalments deposit.

### **Instalment No 2**

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 taking into account the instalment and the required instalments deposit already paid.

### **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 and 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.
- (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 6 (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.

## **Part 8 Miscellaneous**

### **25 Transitional—operation of amendments**

An amendment to this Regulation does not apply to or in respect of any policy of

insurance that takes effect before the amendment commences, unless the amendment otherwise specifically provides.

## 26 Repeal of 1987 Regulation

- (1) The *Workers Compensation (Insurance Premiums) Regulation 1987* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under that Regulation is taken to have effect under this Regulation.

## Part 9 Premium Discount Scheme

### Division 1 Preliminary

#### 27 Commencement

The Scheme commences at 4 pm on 30 June 2001.

#### 28 Interpretation

- (1) In this Part:

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

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

**cost of claims** has the same meaning as in Part 3.

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

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

**member**, in relation to a PDA, means:

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

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

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

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

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

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

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

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

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

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

## 29 Premium Discount Scheme

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

## 30 Employers eligible to participate in PDS (General)

- (1) An employer is eligible to participate in the PDS (General) if the employer has a policy

of insurance with a licensed managed fund insurer.

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

### **31 Employers entitled to participate in Small Business Strategy**

- (1) An employer is eligible to participate in the Small Business Strategy if the employer:
- (a) has no more than 20 full time equivalent workers, and
  - (b) has a policy of insurance with a licensed managed fund insurer.
- (2) However, the following classes of employers are not eligible to participate in the Small Business Strategy:
- (a) minimum premium employers,
  - (b) employers who:
    - (i) are participating in the PDS (General), or
    - (ii) have completed the PDS (General), or
    - (iii) have passed the fourth verification under the Small Business Strategy, or
    - (iv) who are precluded from participating in the Small Business Strategy by reason of clause 60 (Time limits on participation in Scheme).
- (3) An employer who enrolls in a small business premium discount program under Division 3 remains eligible to participate in the Small Business Strategy even if the number of the employer's workers subsequently increases to more than 20 full time equivalent

workers.

- (4) Despite subclause (2) (b), if an employer referred to in that paragraph that is a body corporate merges with, acquires or is acquired by another body corporate, or reconstitutes itself into two or more bodies corporate, the body or bodies formed by the merger, acquisition or reconstitution is or are eligible to participate in the Small Business Strategy (if otherwise eligible).

## **Division 2 Premium Discount Scheme (General)**

### **Subdivision 1 Premium Discount Advisers**

#### **32 Approval of Premium Discount Advisers**

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

### **33 Conditions of approval**

- (1) An approval as a PDA is subject to the following conditions:
  - (a) the PDA must hold professional indemnity insurance covering the activities of the PDA (including the activities of the PDA's members) in carrying out the functions of a PDA,
  - (b) the PDA must sign a performance agreement containing such terms as the Authority may require, and must comply with that performance agreement,
  - (c) the PDA, and each member of the PDA, must comply with the Code of Conduct for PDAs,

**Note—**

Clause 63 (1) provides that it is an offence for a PDA to fail to comply with the Code of Conduct for PDAs.

- (d) the PDA must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 67 (for example, directions as to the use of audit tools),
  - (e) each Principal of the PDA, and each member of the PDA involved in carrying out audits under the Scheme, must satisfactorily complete such course of training as the Authority may direct,
  - (f) the PDA must co-operate with any review of the PDA by the Authority under clause 38, and must allow the Authority access to the PDA's premises and records for that purpose,
  - (g) any conditions of approval set out in the Premium Discount Guidelines.
- (2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

### **34 Functions of a PDA**

A PDA has the following functions:

- (a) to audit the performance and systems of employers to assess whether standards, benchmarks or performance criteria set by the Authority have been met,
- (b) to issue certificates verifying whether those employers are entitled to a premium discount under the Scheme,
- (c) such other functions as are set out in the Premium Discount Guidelines.

### **35 Relationship with employer**

- (1) An employer may engage a PDA to act as PDA in relation to the employer for the

purposes of the Scheme.

- (2) The PDA engaged by an employer may engage any other person or body in order to assist it to carry out its functions in relation to the employer under the Scheme.

### **36 Principals of a PDA**

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

### **37 Functions of Principals**

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

### **38 Review of PDAs by Authority**

- (1) The Authority may at any time review the performance and operations of a PDA, or of any member of the PDA, in accordance with the Premium Discount Guidelines.
- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (3) The Authority may take action at any time under subclause (4) if it determines that:
  - (a) the PDA or a member of the PDA has failed to comply with this Regulation, the Premium Discount Guidelines, the Code of Conduct for PDAs, the performance agreement signed by the PDA or with any direction given by the Authority under clause 67, or
  - (b) the PDA has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
  - (c) the PDA has entered into administration (whether voluntary or involuntary) or has been wound up, or

- (d) the PDA has not been engaged by an employer during the three years preceding the commencement of a review by the Authority, or
  - (e) a Principal of the PDA ceases to be a member of the PDA, being a person who, in the opinion of the Authority, was integral to the performance or operations of the PDA.
- (4) The Authority may take any one or more of the following actions:
- (a) disallow or adjust the PDA Rating of the PDA by notice in writing,
  - (b) disallow or adjust the entitlement to a premium discount of an employer by whom the PDA is engaged by notice in writing,
  - (c) suspend or cancel the approval of a PDA by notice in writing.
- (5) Before taking action under subclause (4), the Authority may give an employer by whom the PDA concerned is engaged an opportunity to make oral or written submissions to the Authority about the matter.
- (6) An action referred to in subclause (4) takes effect 14 days after notice of the action is given to the PDA.
- (7) The actions that the Authority may take under subclause (4) are in addition to any other powers of the Authority.

**Note—**

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

## **Subdivision 2 PDA Ratings**

### **39 Initial PDA Ratings**

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



PDA specified in the Table to this clause from the date that the Authority notifies it of the reclassification until immediately before 4 pm on 30 June following its approval, and thereafter the PDA Rating of the PDA is as determined by the Authority under clause 40.

- (4) A Category 2 PDA or a Category 3 PDA has the PDA Rating specified in the Table to this clause for that category of PDA until immediately before 4 pm on 30 June following its approval. Thereafter, the PDA Rating of the PDA is as determined by the Authority under clause 40.

**Table**

<b>PDA Category</b>	<b>PDA Rating</b>
Category 1 PDA	5%
Category 2 PDA	10%
Category 3 PDA	15%

**40 Subsequent determination of PDA Rating by Authority**

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

#### **41 PDA Rating not transferable**

- (1) A member of a PDA who becomes a member of another PDA or carries out work for another PDA does not thereby transfer the PDA Rating of the first-mentioned PDA to that other PDA.
- (2) A PDA that merges with, or acquires or is acquired by, another PDA does not thereby transfer its PDA Rating to the other PDA, or acquire the PDA rating of that other PDA.

### **Division 3 Small Business Strategy**

#### **42 Approval of sponsors**

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

#### **43 Conditions of approval**

- (1) An approval as a sponsor is subject to the following conditions:
  - (a) the sponsor must hold professional indemnity insurance covering the activities of the sponsor (including the activities of each person employed or engaged by the sponsor) in carrying out the functions of a sponsor,
  - (b) the sponsor must comply with the Code of Conduct for Sponsors,  
**Note—**

Clause 63 (2) provides that it is an offence for a sponsor to fail to comply with the Code of Conduct for Sponsors.
  - (c) the sponsor must comply with the Premium Discount Guidelines and any directions given by the Authority under clause 67,
  - (d) the sponsor must comply with the terms of any funding agreement between the sponsor and the Authority,
  - (e) the sponsor must co-operate with any review of the sponsor by the Authority

under clause 49, and must allow the Authority access to the sponsor's premises and records for that purpose,

(f) any conditions of approval set out in the Premium Discount Guidelines.

(2) The Authority may at any time impose further conditions on an approval by notice in writing, and vary or revoke those conditions by notice in writing.

#### **44 Authority may invite proposals for small business discount programs**

(1) The Authority may at any time invite, in such manner as the Authority determines, sponsors to submit a proposal to conduct a program to assist employers to improve their occupational health and safety and injury management performance (a ***small business premium discount program***).

(2) A proposal is to be made in accordance with the Premium Discount Guidelines.

(3) The Authority may request the sponsor to provide further information or particulars about the proposed small business premium discount program.

#### **45 Assessment of proposals**

(1) The Authority is to assess proposals for small business premium discount programs according to criteria and procedures set out in the Premium Discount Guidelines.

(2) After such assessment, the Authority may accept or reject the proposal, or accept it subject to specified modifications.

#### **46 Funding agreements**

A sponsor whose proposal has been accepted with or without modifications by the Authority may enter into an agreement (a ***funding agreement***) in accordance with the Premium Discount Guidelines with the Authority by which the Authority agrees to provide funds to the sponsor for the proposed small business premium discount program on the terms set out in the funding agreement.

#### **47 Relationship with employer**

(1) An employer may enrol in a small business premium discount program proposed to be conducted by a sponsor at any time after the sponsor is approved up to 6 months after the commencement of a premium year (within the meaning of clause 50) of the employer.

(2) An employer who enrolled in a small business program of 2 years duration and who has passed the third verification for that program (within the meaning of clause 50) may enrol in the third year of a small business premium discount program of 3 years duration, but only with the consent of the sponsor conducting that program.

#### **48 Functions of a sponsor**

A sponsor has the following functions:

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

#### **49 Review of sponsors by Authority**

- (1) The Authority may at any time review the performance and operations of a sponsor in accordance with the Premium Discount Guidelines.
- (2) For the purpose of conducting a review under this clause, the Authority may make such inquiries and undertake such investigations as it thinks fit.
- (3) The Authority may take action at any time under subclause (4) if it determines that:
  - (a) a sponsor has failed to comply with the funding agreement, this Regulation, the Premium Discount Guidelines, the Code of Conduct for Sponsors or with any direction given by the Authority under clause 67, or
  - (b) the sponsor has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with its creditors or made an assignment of its remuneration for their benefit, or
  - (c) the sponsor has entered into administration (whether voluntary or involuntary) or has been wound up, or
  - (d) the small business premium discount program conducted by the sponsor has ceased to be viable.
- (4) The Authority may take any one or more of the following actions:
  - (a) disallow or adjust the entitlement to a premium discount of an enrolled employer by notice in writing,
  - (b) suspend or cancel the approval of a sponsor by notice in writing,
  - (c) suspend or cancel the sponsor's program by notice in writing.
- (5) The Authority may by notice in writing require a sponsor to repay to the Authority any funds provided to the sponsor by the Authority that:
  - (a) have not been spent by the sponsor, or
  - (b) if spent, were not spent in accordance with the funding agreement.

- (6) Before taking action under subclause (4), the Authority may give an employer enrolled in a program conducted by the sponsor concerned an opportunity to make oral or written submissions to the Authority about the matter.
- (7) An action referred to in subclause (4) or (5) takes effect 14 days after the notice of the action is given to the sponsor.
- (8) The actions that the Authority may take under subclause (4) or (5) are in addition to any other powers of the Authority.

**Note—**

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

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

## **Division 4 Premium discounts**

### **50 Definitions**

- (1) In this Division:

**first verification** means a verification to assess whether:

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

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

**fourth verification** means a verification to assess whether:

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

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

insurance by the employer.

**second verification** means a verification to assess whether:

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

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

**third verification** means a verification to assess whether:

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

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

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

(2) For the purposes of this Division:

- (a) an employer passes a verification when the employer’s PDA or sponsor issues a certificate verifying that the employer:
  - (i) in the case of an employer participating in the PDS (General)—has met the standards, benchmarks or performance criteria set by the Authority for that verification, or
  - (ii) in the case of an employer participating in the Small Business Strategy—has met the objectives set by the sponsor for that verification, and
- (b) a reference to a PDA Rating, in relation to a PDA verifying that an employer has passed a verification, is a reference to the PDA Rating of the PDA at the time that it so verifies.

## 51 First year of participation

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

### Note—

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

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

## 52 Change in PDA Rating—first year of participation

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

**PDS level** for the first year of participation is a percentage rate equal to the PDA Rating of the PDA who verifies that the employer has passed the second verification (even though that may result in a lower PDS level).

### 53 Second year of participation

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

**Note—**

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

- (3) An employer is to attempt to pass the third verification within 12 months of the commencement of the employer's second year of participation. The employer may make more than one attempt during that period.
- (4) The employer's entitlement to the discount referred to in subclause (1) is confirmed if the employer's PDA or sponsor verifies that the employer has passed the third verification.

### 54 Change in PDA Rating—second year of participation

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



the PDA Rating of the PDA who verifies that the employer has passed the third verification (even though that may result in a lower PDS level).

### **55 Third year of participation**

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

**Note—**

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

- (2) The amount of premium discount to which the employer is provisionally entitled is to be calculated in accordance with the relevant Insurance Premiums Order. For that purpose, the **PDS level** for the third year of participation is:
  - (a) in the case of an employer participating in the PDS (General)—a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the third verification, or
  - (b) in the case of an employer participating in the Small Business Strategy—a percentage rate of 5%.

**Note—**

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

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

### **56 Change in PDA Rating—third year of participation**

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

different to the PDA who verified that the employer passed the third verification, the **PDS level** for the third year of participation is a percentage rate equal to one-third of the PDA Rating of the PDA who verifies that the employer has passed the fourth verification (even though that may result in a lower PDS level).

## 57 Verifications

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

## 58 Provisional entitlement not confirmed

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

## 59 Year of participation may be repeated

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

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

## **60 Time limits on participation in Scheme**

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

## **Division 5 Reviews and appeals**

### **61 Internal review**

- (1) An applicant for approval as a PDA that is aggrieved by a decision of the Authority to refuse to approve the applicant may request the General Manager of the Authority to review the decision.
- (2) A PDA that is aggrieved by a determination of a PDA Rating for the PDA by the Authority may request the General Manager to review the determination.
- (3) A request for a review is to:
  - (a) be in writing, and
  - (b) clearly outline the reasons for the request, and
  - (c) be served on the Authority within 14 days of the day on which the Authority gave the applicant notice of the decision or determination concerned.
- (4) The PDA is to provide any documents or information in support of the request that the Authority requires the PDA by notice in writing to provide.
- (5) The General Manager may delegate the review of a decision or determination under this clause, but only to a person who was not involved with the original decision or determination.

### **62 Appeal to Administrative Decisions Tribunal**

- (1) A PDA that is aggrieved by a decision of the Authority to cancel or suspend the PDA's approval may appeal to the Administrative Decisions Tribunal (***the Tribunal***) against

the decision.

- (2) An appeal must be made within 14 days (or such longer period as the Authority may allow) after notice of the decision is given to the PDA. The appeal is to be lodged with the Tribunal, and notice giving details of the appeal is to be given to the Authority.
- (3) An appeal does not affect any decision with respect to which it is made until the appeal is determined.

## **Division 6 Offences**

### **Note—**

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

### **63 Failure to comply with Code of Conduct**

- (1) A PDA must comply with the Code of Conduct for PDAs.

Maximum penalty: 50 penalty units.

- (2) A sponsor must comply with the Code of Conduct for sponsors.

Maximum penalty: 50 penalty units.

### **64 Purporting to be a PDA**

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

### **65 Failure to notify Authority of changes concerning PDA**

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

- (a) a Principal of the PDA ceases to be a Principal, or a member of the PDA,
- (b) the PDA ceases to operate, or merges with or acquires another PDA,

- (c) a change in the composition of the PDA that materially affects the skills or expertise of the PDA in occupational health and safety or injury management.

Maximum penalty: 50 penalty units.

## **Division 7 General**

### **66 Premium Discount Guidelines**

- (1) The Authority may from time to time issue guidelines for or with respect to the following matters:
  - (a) the criteria to be used by the Authority in determining the suitability of an applicant, or a class of applicants, to be a PDA or a sponsor,
  - (b) conditions of approval for PDAs and sponsors,
  - (c) the functions of PDAs and sponsors,
  - (d) the engagement of PDAs by employers (including fees payable to PDAs by employers),
  - (e) the enrolment of employers in small business premium discount programs (including fees payable to sponsors by employers),
  - (f) the criteria to be used by the Authority in classifying a PDA as a Category 1 PDA, a Category 2 PDA or a Category 3 PDA,
  - (g) the reclassification of a Category 1 PDA as a Category 2 PDA,
  - (h) the criteria to be used by the Authority in determining PDA Ratings for PDAs,
  - (i) benchmarks, standards or performance criteria to be achieved by employers in order for the employers to be entitled to a premium discount under the PDS (General) or the Small Business Strategy,
  - (j) notification of matters and provision of information to the Authority by PDAs and sponsors,
  - (k) the carrying out of audits and verifications by PDAs and verifications by sponsors,
  - (l) the functions of PDAs and sponsors,
  - (m) the submission and assessment of proposals for small business premium discount programs,
  - (n) the content and conduct of small business premium discount programs,
  - (o) the nature of funding agreements between the Authority and sponsors,

- (p) review of PDAs or sponsors by the Authority,
- (q) other matters in connection with the Scheme.

#### **67 Directions by Authority to PDAs or sponsors**

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

#### **68 Codes of Conduct**

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

#### **69 Calculation of premium discount**

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

**Note—**

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

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

#### **70 Powers of Authority if PDA or sponsor ceases to operate**

- (1) If a PDA ceases to operate (whether because its approval is suspended or cancelled or

for any other reason), the Authority may do such things as it thinks fit to enable the employer to continue to participate in the PDS (General), including arranging another PDA for the employer.

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

## **71 Statistics**

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

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