



Workers Compensation Insurance Policy

Date 1 July 2018

Recitals

1. Section A of this Policy contains the provisions as prescribed pursuant to section 159 of the *Workers Compensation Act 1987*.

Note: The notes to clause 24 numbered 1, 2 and 3 do not apply to this Policy.
2. Section B of this Policy contains provisions in relation to the calculation of premiums.
3. Section C of this Policy contains endorsements.

Section A

Workers Compensation Act 1987 New South Wales Employer's Insurance Policy

Part 1 Preliminary

1. Definitions

In this policy:

Employer means the person insured under this Policy, being the person named as the Employer in the Schedule of Employer Particulars.

Insurer means the insurer of the Employer under this Policy, being the person named as the Insurer in the Schedule of Employer Particulars.

period of insurance means the period specified in the Schedule of Employer Particulars as the period during which this Policy is in force, and any subsequent period in respect of which this Policy is duly renewed.

Schedule of Employer Particulars means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of this Policy.

the Act means the *Workers Compensation Act 1987* and includes the *Workplace Injury Management and Workers Compensation Act 1998*.

the Proposal means the Proposal for insurance in respect of which this Policy is issued (made by the Employer to the Insurer).

worker has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act.

2. Proposal and schedule form part of this Policy

The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of this Policy

Part 2 Cover provided by Policy

3. What the insurer is liable for

The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance:

- (a) compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the *Workers Compensation Act 1987*),
- (b) any other amount that the Employer becomes liable to pay independently of the Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue),
- (c) costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceedings in which any such liability is alleged.

The Insurer will not indemnify the Employer for the Employer's liability for GST payable on the settlement of a claim.

4. Businesses and industrial activity to which Policy applies

This Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the businesses or industrial activities to which this Policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for this Policy is to be adjusted in accordance with any change in the businesses or industrial activities to which this Policy applies.

5. Insurer is directly liable to workers

The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under this Policy. This means that a claim can be made and action taken directly against the Insurer.

6. Insurer is bound by judgements etc. against employer

The Insurer is bound by and subject to any judgement, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under this Policy.

7. Premium

The premium for this Policy is calculated in accordance with clause 29.

Note: this Policy is exempt from the application of the Workers Compensation Market Practice and Premiums Guidelines as per section 7A of the *Workers Compensation Act 1987*.

Part 3 Conditions of Policy

8. Employer must give insurer notice of injury to worker

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

9. How notices are to be given

- (a) Notices to be given under this Policy to the Insurer are to be given by being delivered, posted or transmitted electronically to the address of the Insurer last notified to the person giving the notice;
- (b) Notices to be given under this Policy to the Employer are to be given by being delivered, posted or transmitted electronically to the address of the Employer last known to the Insurer;
- (c) The notification of injury required by clause 8 is to be given to the Insurer in the manner required by subclause (a) or in such other manner as the Insurer indicates to the Employer that the Insurer will accept.

10. Employer not to make admissions etc.

The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

11. Defence of proceedings

The Insurer can use the name of the Employer in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

12. Subrogation

The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by this Policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

13. Precautions to prevent injury

The Employer must take all reasonable precautions to prevent injury.

14. Alterations and repairs following injury

So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

15. Insurer's right of inspection

The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

16. Assignment

An assignment of interest under this Policy does not bind the Insurer, unless the written consent of the Insurer to the assignment has been obtained.

17. Renewal of Policy

This Policy is renewed on the expiration of the current period of insurance to which it applies, except where:

- (a) the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required; or
- (b) the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy, but the Insurer cannot refuse to renew this Policy unless the State Insurance Regulatory Authority (**the Authority**) has given its prior consent in writing to the refusal.

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

18. Cancellation of Policy

- (1) The Insurer may cancel this Policy at any time if the Insurer has first obtained the written consent of the Authority.
- (2) The Insurer cannot cancel this Policy without that consent except in any circumstances approved by the Authority and specified in this Policy.
- (3) The Insurer cancels this Policy by giving notice of cancellation in writing to the Employer.
- (4) The cancellation takes effect on the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer.
- (5) Section 184 of the 1987 Act applies as if the Policy had been cancelled under that section.

19. No waiver or alterations

A provision of this Policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on this Policy.

20. Employer must tell insurer if unable to give suitable work requested by injured worker

If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following:

- (a) the fact of the worker's request and that the Employer has not provided suitable employment,
- (b) any proposal to provide or arrange for suitable employment for the worker, having regard to the certificate of capacity which the worker supplies and to the Employer's return-to-work programme (if any) or otherwise.

21. Employer must advise change of business or industry

The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.

22. Records to be kept of wages

The Employer agrees to allow the Insurer to inspect the records kept by the Employer under section 174 of the 1987 Act.

Note: Section 174 of the 1987 Act requires the Employer to keep certain records (such as records of wages paid to workers) and requires the Employer to keep those records for at least 5 years. The section gives the Authority certain rights to inspect those records.

22A. Insurer's right of access

- (a) If the Employer has failed to pay a premium by more than 24 hours after the due date in accordance with the Employer's obligation in clause 29(b) of this Policy, the Insurer will have a right of access to the Employer's books at all reasonable times.
- (b) The Insurer may invoke the right of access under clause 22A(a) in the event of a failure to pay a premium during the current insurance year, or in the event of a failure to pay a premium during a past year in which the Employer had a policy of insurance with the Insurer, and the past failure is extant.
- (c) If the Insurer has a right of access under clause 22A(a):
 - (1) the Insurer must give at least 24 hours written notice to the Employer of the time and place of entry onto the Employer's premises or other premises where the books are kept in order to exercise the right of access;
 - (2) the Employer will permit and facilitate a representative of the Insurer who is authorised in writing for the purposes of clause 22A(c) to enter onto the Employer's premises in order to inspect the books in hard copy or soft copy form as the representative may require;
 - (3) the representative may take copies of the books or any part of them as the representative may require;
 - (4) the representative will comply with any reasonable work health and safety requirements while on the Employer's premises for the purposes of clause 22A(c); and

- (5) the Employer will pay the Insurer's costs of and incidental to exercising the right of access and inspecting the Employer's books, as if the Insurer had been awarded party/party costs in the Supreme Court of New South Wales.
- (d) The Employer's "books" referred to in clause 22A has the same meaning as "books" defined in section 9 of the *Corporations Act 2001*, which includes the "financial records" to which a director of a company has access under section 290 of the *Corporations Act 2001*.
- (e) The purpose for which the Insurer may exercise its right of access under clause 22A(a) is to determine whether there are reasonable grounds for suspecting that the Employer is insolvent or would become insolvent, within the meaning of section 588G(1)(c) of the *Corporations Act 2001*.

23. Cover conditional on employer complying with Policy, Act and regulations

The indemnity provided by this Policy is conditional on compliance by the Employer with the provisions of this Policy, the Act and the regulations under the Act.

24. Act and regulations form part of Policy

This Policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of this Policy.

Notes

1. *Recovery of excess from Employer.* Under section 160 of the 1987 Act, the Employer is required to repay the prescribed excess amount in respect of each claim for weekly compensation paid by the Insurer.

An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums.
2. *Disputes about premium.* If the Employer disputes the premium for this Policy calculated by the Insurer, clause 32 of this Policy provides for an internal review procedure.
3. *Domestic etc. workers.* If this Policy is issued for domestic or similar workers (including when this Policy forms part of a household insurance package) it is to be read as if:
 - (a) the reference to the Employer carrying on business were a reference to the Employer employing domestic or similar workers, and
 - (b) the provisions in clause 4 for the Employer to notify a change of business or industrial activity were omitted, and the provisions of clauses 17 (Renewal of Policy) and 21 (Employer must advise change of business or industry) were omitted.
4. *Workplace injury management.* The Employer of an injured worker who has been totally or partially incapacitated for work has certain obligations under Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, including an obligation under section 49 to provide suitable employment if the worker is able to return to work. It is a condition of this Policy that the Employer must comply with

the requirements of that Chapter, but only if the Insurer has taken appropriate steps to ensure that the Employer is made aware of those obligations.

Section B

Part 4 Introduction

25. Specialised Insurer

CMI is taken to be a licensed insurer that is a specialised insurer for the purposes of the 1987 Act and is exempted from the Workers Compensation Market Practice and Premiums Guidelines.

26. Employers to insure with CMI

CMI has exercised its power under section 31 of the CI Act to require employers in the coal industry in New South Wales to effect all workers' compensation insurance relating to their workers in that industry with CMI.

27. Severability

If the whole or any parts of Sections B and C of this Policy are or become unlawful, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Policy shall not be affected and shall be read as if those parts had been severed.

28. Definitions

In Sections B and C of this Policy:

Business has the same meaning as in Division 2B of Part 7 of the Act.

CI Act means the *Coal Industry Act 2001*.

CMI means Coal Mines Insurance Pty Ltd which is the workers compensation company approved under section 9 of the CI Act to provide workers compensation schemes in relation to workers engaged in the coal industry.

Contractor means a person (which may be an individual or a corporation) that has entered into a contract with the Employer to undertake the whole or any part of the Work; and **Contractors** is the plural of Contractor.

Policy period means the period or periods when the Employer has been insured by the Insurer under any policy or policies of insurance, which period may exceed 12 months.

Predecessor – a person is the predecessor of the Employer if:

- (a) the Employer has acquired or otherwise come into possession of the business of the person; or
- (b) 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.

Uninsured claimant means a contracting party down the contracting chain from the Employer that undertakes the whole or any part of the Work and that does not maintain a policy of insurance with the Insurer.

Wages in relation to a worker has the meaning attributed to it by the applicable Coal Mines Insurance Definition of Assessable Wages and includes payment (whether by way of commission, fee, reward or otherwise) to deemed employees and some categories of contractors (whether the person's appointment is written or verbal and referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed to be a worker after deducting such amount of costs necessarily incurred by that person in performing that contract.

Work means work to be undertaken by the Employer in the course of or for the purposes of the Employer's trade or business.

Part 5 Premiums

29. Premium calculation

(a) The premium for this Policy is calculated in accordance with the premium rate or rates set by the Insurer applied to:

- (1) the aggregate amount of wages paid or allowed to workers during each period of insurance; and
- (2) the incurred cost of claims for indemnity made under this Policy against the Insurer for workers' compensation insurance,

subject to a minimum premium as set by the Insurer. The minimum premium will be higher than the premium calculated in accordance with the formula in sub-clauses 29(a)(1)&(2) in circumstances where the amount of wages referred to in sub-clause 29(a)(1) is less than the threshold amount determined by the Insurer for the minimum premium to be payable.

(b) The Employer must pay the Insurer the premium determined by the Insurer for this Policy by the due date specified in writing by the Insurer. If a due date is not specified in writing by the Insurer, the due date is the commencement date of the period of insurance.

(c) If the Employer fails to pay the full amount of the premium by the due date for payment of the premium, the Employer must pay a late payment fee on the amount in respect of the period from that date until the date of payment at such rate:

- (1) as the Insurer determines from time to time for the purposes of this clause; or.
- (2) if the Insurer makes no such determination, at the prescribed rate for a late payment fee on unpaid premiums (calculated in accordance with the Workers Compensation Market practice and Premiums Guidelines).

(d) The Employer must:

- (1) as soon as practicable but not later than 42 days after the commencement date of each period of insurance, supply the Insurer with a declaration in a form approved by the Insurer, duly completed, which contains a reasonable

- estimate of worker numbers and the wages that will be payable by the Employer during the period of insurance to which the declaration relates; and
- (2) as soon as practicable but not later than 28 days after receiving written notice from the Insurer (which notice may be given in hard copy or electronically), supply the Insurer with a declaration in a form approved by the Insurer, duly completed, which contains a reasonable estimate of worker numbers and the wages that will be payable by the Employer during the period of insurance to which the notice relates.
- (e) The Insurer may serve the notice in clause 29(d)(2) on the Employer more than once during the period of insurance in the event the Insurer believes that the Employer's estimate of wages has changed by more than 10%.
- (f) The Employer must:
- (1) as soon as practicable but not later than 42 days after the end of each period of insurance, supply the Insurer with a declaration in a form approved by the Insurer, duly completed, which contains a full and correct declaration of worker numbers and wages that were paid by the Employer during the period of insurance to which the declaration relates; and
 - (2) as soon as practicable but not later than 28 days after receiving written notice from the Insurer (which notice may be given in hard copy or electronically), supply the Insurer with a declaration in a form approved by the Insurer, duly completed, which contains a full and correct declaration of worker numbers and wages that were paid by the Employer during the period of insurance to which the notice relates.
- (g) The Insurer may adjust the premium payable on the basis of a change in relevant wages details. In this sub-clause:
- (1) **relevant wage details** means the information as to wages payable or paid to workers on the basis of which the amount of the premium payable for the issue of this Policy is determined by the Insurer; and
 - (2) a change in relevant wage details occurs when;
 - (A) the Employer changes the Employer's estimate of the wages that will be payable to workers during a period of insurance by more than 10%;
 - (B) the Employer knows, or ought reasonably to know, that the Employer's estimate of the wages that will be payable to workers during a period of insurance, has changed by more than 10%;
 - (C) the wages actually paid to workers during a period of insurance is different to the amount of wages estimated to be payable during that period, by any amount.
- (h) The Employer must pay any amount that becomes due as a result of any such adjustment of the premium. If the Employer fails to pay the full amount of the adjusted premium within 28 days of the date for payment stipulated in an invoice from the Insurer for the adjusted premium, the Employer must pay a late payment fee on the amount in respect of the period from that date until the date of payment at the rate specified in clause 29(c).

- (i) The Employer must provide updated worker numbers and wages information to the Insurer (which information may be given in hard copy or electronically) during the period of insurance when the Employer knows, or ought reasonably to know, that the Employer's estimate of the wages that will be payable to workers during the period has changed by more than 10%. For the purposes of this sub-clause:
 - (1) the information must be provided as soon as practicable, but not later than 28 days after the Employer knew, or ought reasonably to have known of the change; and
 - (2) the information must be provided regardless of any requirement or request by the Insurer to provide the information.
- (j) If the Insurer finds, having regard to information obtained pursuant to an inspection of the Employer's records under clause 22 of this Policy or otherwise, that:
 - (1) the Employer has provided the Insurer with information that was false or misleading in a material particular, and
 - (2) the Insurer, relying on that information, has calculated a premium for the issue or renewal of this Policy which is less by a certain amount than the premium would otherwise have been,the Employer must pay the Insurer a sum equal to that amount plus:
 - (3) twice the late payment fee calculated pursuant to clause 29(c); and
 - (4) any costs of an inspection payable pursuant to clause 22 of this Policy.
- (k) For the avoidance of doubt, the Insurer may recover from the Employer in a court of competent jurisdiction as a debt due to the Insurer, the amount of the Employer's liability under clause 29(j) while the Insurer elects to continue providing indemnity to the Employer under this Policy.
- (l) In the event the Employer requests a certificate of currency with respect to this Policy:
 - (1) the certificate will be for the period of insurance, provided that if the Employer has not paid a premium for the period of insurance in full, the certificate may be, in the Insurer's discretion, for a period of 90 days cover commencing on the date of the certificate;
 - (2) the request must be accompanied by updated wages information (which information may be given in hard copy or electronically) in relation to the Employer's estimate of the wages that will be payable to workers from the date of the request to the end of the period of insurance, if that estimate is different to the Employer's estimate for the period of insurance on a pro-rata basis from the date of the request, by more than 10%; and
 - (3) the Employer must:
 - (A) pay any overdue premium for the current or past periods of insurance; and
 - (B) provide any overdue declaration of worker numbers and wages, before the Insurer will be liable to provide the certificate.

- (m) The words **each period of insurance** in clause 29(a)(1) mean the policy period over which the Insurer takes into account wages paid or allowed for the purpose of calculating the wages history component of the premium.
- (n) The words **this Policy** in clause 29(a)(2) mean the policy period over which the Insurer takes into account claims for the purpose of calculating the claims history component of the premium.
- (o) The period referred to in clause 29(a)(1) includes any period during which a predecessor of the Employer has been insured with the Insurer, and the Insurer may take into account wages paid or allowed to workers by the predecessor with respect to the relevant business of the predecessor during that period.
- (p) The policy period for the purposes of clause 29(a)(2) includes any period during which a predecessor of the Employer has been insured with the Insurer, and the Insurer may take into account the cost of claims for the predecessor with respect to the relevant business of the predecessor during that period.

30. Employer to notify insurer of monies paid

The Employer must notify the Insurer of any monies paid by the Employer in relation to claims accepted by the Insurer. Notification is required to be made by the Employer to the Insurer on the last day of each month that the claim remains active, and such notification is to be in accordance with the Insurer's requirements as specified from time to time.

31. Automatic renewal

- (a) The Employer must, in accordance with clause 29(d)(1) and as soon as practicable but not later than 42 days after the due date for renewing this Policy, supply the Insurer with a declaration in a form approved by the Insurer, duly completed, which contains a reasonable estimate of worker numbers and the wages that will be payable by the Employer during the new period of insurance.
- (b) In the event that the Employer fails to supply the Insurer with the duly completed declaration within the stipulated time, the Insurer will automatically renew the Policy from the due date for renewal using the wages for the prior period of insurance plus a loading of 5% for the purpose of calculating the premium for new period of insurance.

32. Premium appeal

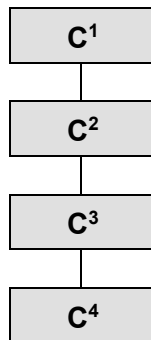
- (a) The Employer may apply for an internal review by the Insurer of a decision with respect to the calculation of a premium payable for a period of insurance including the minimum premium, or for a premium adjustment during a period of insurance.
- (b) Subject to clause 32(c), an application for an internal review must be:
 - (1) in writing and received by the insurer within 28 days after the employer has been notified of the decision; and
 - (2) accompanied by any submissions or other material that the employer wishes the insurer to take into account.
- (c) In the event the Insurer receives an application for an internal review more than 28 days after the Employer has been notified of the decision, the Insurer will undertake the internal review if and only if:

- (1) the Insurer made the decision on the basis of a mistake on the Insurer's part;
or
 - (2) information that was relevant to the decision only became known to the Employer more than 28 days after the Employer had been notified of the decision and that information was not reasonably available to the Employer within 28 days of being notified of the decision.
- (d) An application for an internal review of a decision is to be dealt with by a person on behalf of the Insurer other than the person who made the decision (the "internal reviewer"). The internal reviewer must be, as far as is practicable, a person:
- (1) who was not substantially involved in the process of making the decision under review;
 - (2) who is an employee of the Insurer or is an employee of an organisation notified in writing to the Employer; and
 - (3) who is otherwise suitably qualified to deal with the issues raised by the application.
- (e) In reviewing a decision, the internal reviewer must consider any relevant material submitted by the Employer.
- (f) Following the internal review of the decision, the internal reviewer may:
- (1) affirm the decision;
 - (2) vary the decision; or
 - (3) set aside the decision and make a decision in substitution for the decision that is set aside.
- (g) As soon as practicable (or in any event within 21 days) after the completion of an internal review of a decision, the Insurer must notify the Employer in writing of:
- (1) the outcome of the internal review, and
 - (2) the reasons for the decision in the internal review.
- (h) For the purposes of clause 32(g)(2), a statement of reasons will set out the following:
- (1) the findings on material questions of fact, referring to the evidence or other material on which those findings were based;
 - (2) the understanding of the internal reviewer of the applicable law; and
 - (3) the reasoning processes that led the internal reviewer to the conclusions the reviewer made.
- (i) The Employer is not entitled to a review under this clause 32 of any decision previously reviewed under this clause 32.
- (j) Employer must pursue the internal review to its conclusion under this clause 32 before taking any other steps to resolve a dispute over a premium calculation or adjustment.

Part 6 Subcontractors

33. Purpose

- (a) The purpose of this Part 6 is to address circumstances where a contracting party that does not have a policy of insurance with the Insurer is entitled under legislation to claim indemnity against the Insurer for a workers' compensation liability. In those circumstances, the claim will be deemed for the purpose of calculating premiums to be a claim by the contracting party who is next up the contracting chain and who has a policy of insurance with the Insurer.
- (b) For example, a contracting chain may have four contracting parties, as follows:



- (c) In this scenario, the contracting parties C¹, C², C³ and C⁴ are all employers in the coal industry in New South Wales. C¹, the head contractor, has a policy of workers' compensation insurance with the Insurer, but C², C³ and C⁴ do not have policies with the Insurer. If a worker employed by C⁴ is injured and makes a workers' compensation claim against C⁴, C⁴ may be entitled under the Act to claim indemnity against the Insurer. In that event, the Insurer will be entitled under this Part 6 to calculate C¹'s premium in accordance with clause 29(a)(2) of this Policy as if C¹ had made the claim for indemnity.
- (d) Alternatively, if C¹ and C³ have policies of workers' compensation insurance with the Insurer, the Insurer will only be entitled under this Part 6 to calculate C³'s premium in accordance with clause 29(a)(2) of this Policy as if C³ had made the claim for indemnity.

34. Application

- (a) This Part 6 applies where:
 - (1) the Employer contracts with a Contractor for the execution by or under the Contractor of the whole or any part of the Work and at the time a worker employed in the execution of the whole or any part of the Work receives an injury, the worker's employer is an Uninsured Claimant; and
 - (2) there is no contracting party for the whole or any part of the Work who has a policy of insurance with the Insurer, between the Employer and the Uninsured Claimant.
- (b) For the avoidance of doubt:
 - (1) the Uninsured Claimant may be the Contractor, a subcontractor to the Contractor, a sub-subcontractor to the Contractor or another contracting party down the contracting chain from the Contractor; and

- (2) this Part 6 applies where an Uninsured Claimant does not have a policy of insurance with any licensed insurer in contravention of section 155 of the Act.
- (c) In the event an Uninsured Claimant has a policy of insurance with a licensed insurer in accordance with section 155 of the Act but the licensed insurer is not the Insurer, this Part 6 will only apply if:
 - (1) the Insurer accepts liability for the Uninsured Claimant's claim; or
 - (2) the Insurer has investigated the Uninsured Claimant's claim and has determined in writing that the Uninsured Claimant was, at the date of the injury that gave rise to the claim, required under the CI Act to have all of its workers' compensation insurance with the Insurer in respect of the Uninsured Claimant's employees in the coal industry.

35. Cost of claims

- (a) The cost of any claim for indemnity made by an Uninsured Claimant against the Insurer for a workers' compensation liability will be taken to be a claim by the Employer for the purpose of calculating the Employer's premium payable under this Policy in circumstances where the Insurer is taken to be the workers' compensation insurer of the Uninsured Claimant.
- (b) For the purposes of this clause 35, the circumstances in which the Insurer will be taken to be the workers' compensation insurer may include the Uninsured Claimant being an employer in the coal industry in New South Wales.

36. Information

- (a) The Insurer may, for the purpose of this Part 6, at any time during the currency of this Policy, require the Employer in writing (in hard copy or by email) to provide information with respect to any Contractors.
- (b) The Employer will, depending on the terms of the requirement:
 - (1) provide a declaration in writing within 14 days from the date of receiving the notice that the Employer has no Contractors; or
 - (2) within 14 days from the date of sending the notice, use its best endeavours to arrange for each of the Contractors to provide information requested by the Insurer in relation to any subcontractor engaged by the Contractor;
 - (3) provide the subcontractor's information to the Insurer in hard copy or by email, within 72 hours of receipt of the information from a subcontractor.

Section C

Part 7 Endorsements

The term **FWO** means the Fair Work Ombudsman, its predecessors Fair Work Australia, the Australian Industrial Relations Commission or such other competent Commonwealth or New South Wales industrial tribunal, commission or Court as may have jurisdiction in respect of the subject matter of the relevant endorsement.

The term IFA means Individual Flexibility Arrangement.

37. Accident pay indemnity

The Insurer will, for the period of a worker's contract, indemnify the Employer for the Employer's liability to pay accident pay to a worker covered by the Policy arising from any industrial award order or determination made by FWO, on the following terms and conditions:

- (a) In this endorsement:
 - (1) **accident pay** has the same meaning as in an industrial award, order or determination of FWO for accident pay applying to a worker in respect of whom an indemnity is claimed under this endorsement;
 - (2) **worker's contract** means the agreement between the Employer and a worker which is subject to the industrial award, order or determination for accident pay; and
 - (3) **industrial award, order or determination** includes an approval or certification or an enterprise bargaining agreement or IFA.
- (b) The Insurer will not indemnify the Employer for accident pay with respect to any injury to a worker unless the Insurer is also liable to indemnify the Employer for liability to pay compensation with respect to the same injury under the Act and this Policy.
- (c) Subject to clause 37(d), the Insurer will not indemnify the Employer for accident pay with respect to any worker for a period that extends beyond the duration of the worker's contract that has expired through the normal passage of time notwithstanding that:
 - (1) the liability of the Employer for accident pay extends, or may extend, for a further period; and/or
 - (2) the industrial award, order or determination for accident pay made before the period of insurance provides, or may provide, that the Employer's liability extends for a further period.
- (d) Notwithstanding clause 37(c) and subject to the other provisions of this endorsement, the Insurer will indemnify the Employer with respect to a worker in the event that an industrial award, order or determination of FWO applying during the period of insurance provides that the Employer is liable to pay accident pay for a period that extends beyond the duration of the worker's contract that has expired. In that event, the indemnity will be for the time that the Employer is liable to pay accident pay.
- (e) In the event the period of a worker's contract extends up to 78 weeks, the Insurer will not be liable to indemnify the Employer for accident pay in respect of any worker for any injury or injuries arising out of one occurrence for more than 78 weeks notwithstanding that the liability of the Employer to pay accident pay extends for a further period.
- (f) The Insurer will not be liable to indemnify the Employer for accident pay unless the Employer, during the currency of any such indemnity, maintains in force and pays all premiums then due on the Policy.

- (g) If a dispute arises between the Employer and any worker or group of workers as to the Employer's liability or as to the extent of the Employer's liability under any provision of an award order or determination of FWO regarding accident pay, the Employer must inform the Insurer of the dispute as soon as it arises and in any event before becoming committed to any course of action or interpretation. If requested by the Insurer, the Employer must refer the matter for determination to FWO.
- (h) The Insurer will not be liable to indemnify the Employer for accident pay under this endorsement unless the Employer has observed and fulfilled the terms and conditions contained in this endorsement and in the Policy insofar as they relate to anything to be done or complied with by the Employer.
- (i) Notwithstanding anything to the contrary in this endorsement, the Insurer may at any time by giving notice to the Employer in accordance with clause 9(2) of this Policy, cancel the accident pay indemnity in this endorsement provided that the cancellation of the indemnity will be taken to be effective:
 - (1) if the notice is delivered, on the date of the delivery;
 - (2) if the notice is posted, on the expiration of seven clear days from the date of posting the notice; or
 - (3) the notice is emailed, on the day that the Employer unequivocally acknowledges the notice by reply email.

38 Bonus payments indemnity

Where:

- (a) the Employer is liable to pay weekly compensation under the provisions of the Act in respect of an injury to a worker; and
- (b) the Insurer is liable to indemnify the Employer in respect of such weekly compensation pursuant to the Policy,

the Insurer will indemnify the Employer in respect of its liability to make bonus payments, during the period of his total incapacity for work resulting from that injury, to such worker pursuant to an agreement (other than bonus payments pursuant to any award, order or determination made by FWO) on the following terms and conditions:

- (1) The Insurer is not liable to indemnify the Employer in respect of bonus payments for more than thirty nine weeks notwithstanding that the liability of the Employer extends for a further period.
- (2) The Insurer is not liable to indemnify the Employer in respect of bonus payments unless the Employer, during the currency of any such indemnity, maintains in force and pays all premiums then due on the Policy.
- (3) The Insurer is not liable to make payment under any indemnity granted under this endorsement unless the Employer has observed and fulfilled the terms and conditions contained in this endorsement and in the Policy insofar as they relate to anything to be done or complied with by the Employer.
- (4) Notwithstanding anything to the contrary in this endorsement, the Insurer may at any time by giving written notice to the Employer cancel the extension of the indemnity referred to above. The notice of cancellation must be posted to the Employer at the Employer's last address known to the Insurer, and the

cancellation of the extension of indemnity is taken to be effective on expiration of seven clear days from the date of posting the notice.

- (5) If a dispute arises between the Employer and any worker or group of workers as to the Employer's liability or as to the extent of the Employer's liability under any provision of an award order or determination of FWO regarding bonus payments, the Employer must inform the Insurer of the dispute as soon as it arises and in any event before becoming committed to any course of action or interpretation. If requested by the Insurer, the Employer must refer the matter for determination to FWO.

39 Superannuation indemnity

- (a) In this endorsement:
 - (1) *Auscoal Trust Deed* has the meaning attributed to it in section 2(1) of the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*.
 - (2) *Eligible Worker* means a worker:
 - (A) for whom the Employer is liable to pay compensation under the Act (and to whom the Insurer is would be liable under clause 5 of this Policy); and
 - (B) who is an Eligible Employee of the Employer within the meaning of clause 2.1A of the Auscoal Trust Deed and has been admitted as a Member within the meaning of clause 2.1A of the Auscoal Trust Deed.
 - (3) *Employers Superannuation Contributions* means an amount up to a maximum of \$74.55 per week.
- (b) The Insurer will indemnify the Employer for the Employer's Superannuation Contributions up to a maximum of \$74.55 per week with respect to Eligible Workers in proportion to the Insurer's payments of compensation per week under this Policy, provided that the Insurer's liability to indemnify the Employer will be conditional upon the Eligible Worker's continuing employment by the Employer up to 78 weeks, being the period referred to in clause 37(e) of this Policy.
- (c) For the avoidance of doubt, the Insurer's liability to indemnify the Employer for the Employer's Superannuation Contributions:
 - (1) with respect to an Eligible Worker's incapacity for part of a week will be the difference between whatever the Employer pays to the trustee of the Auscoal Trust Deed for the Employer's compulsory superannuation guarantee payment and \$74.55 provided that if the Employer pays \$74.55 or more to the trustee for the week, the Insurer will not be liable to pay anything to the trustee;
 - (2) will continue:
 - (A) until the Eligible Worker's incapacity ceases;
 - (B) until the Eligible Worker's employment with the Employer is terminated by the Employer, the Eligible Worker or otherwise; or
 - (C) for a maximum of 78 weeks from the date of injury,

whichever event occurs first; and

- (3) will not arise in the event an Eligible Worker is incapacitated for the whole of a week and the Employer elects to pay any superannuation payments to the trustee of the Auscoal Trust Deed with respect to the Eligible Worker while he or she is receiving compensation under the Act as a worker to whom the Insurer is liable under clause 5 of this Policy.
- (d) The Insurer will make payments pursuant to this endorsement directly to the trustee of the Auscoal Trust Deed on a periodic basis as determined by the Insurer.
 - (e) Payment by the Insurer of the Employer's Superannuation Contributions in accordance with this endorsement will be taken to be a cost of a claim for indemnity made under this Policy for the purpose of calculating the premium payable by the Employer pursuant to clause 29(a)(2) of this Policy.
 - (f) Notwithstanding anything to the contrary in this endorsement, the Employer may at any time by giving notice to the Insurer in accordance with clause 9(1) of this Policy, cancel the benefit of the superannuation payments indemnity in this endorsement provided that the cancellation of the benefit will be taken to be effective.
 - (1) if the notice is delivered, on the date of the delivery;
 - (2) if the notice is posted, on the date the notice is received by the Insurer; or
 - (3) if the notice is emailed, on the day that the Insurer unequivocally acknowledges the notice by reply email.
 - (g) Notwithstanding anything to the contrary in this endorsement, the Insurer may at any time by giving notice to the Employer in accordance with clause 9(2) of this Policy, cancel the superannuation payments indemnity in this endorsement provided that the cancellation of the indemnity will be taken to be effective:
 - (1) if the notice is delivered, on the date of the delivery;
 - (2) if the notice is posted, on the expiration of seven clear days from the date of posting the notice; or
 - (3) if the notice is emailed, on the day that the Employer unequivocally acknowledges the notice by reply email.
 - (h) For the avoidance of doubt, a cancellation may be made under clauses 39(f) or 39(g) after a claim is made under this Policy for an Eligible Worker.
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