



## Offer to extend accident pay coverage

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1. This is an offer to extend the accident pay coverage in your workers compensation insurance policy with Coal Mines Insurance Pty Limited (CMI) after 30 June 2013.

### Accident pay

2. If you are an employer in the NSW coal industry, you must either:
  - a. renew your current policy with CMI for a period of 12 months; or
  - b. take out a worker's compensation insurance policy with CMI for a period of 12 months.
3. Clause 37 of the current CMI policy is an endorsement which provides cover to the insured employer for accident pay. "Accident pay" is defined in clause 37 of the policy to have the same meaning as in an industrial award, order or determination of Fair Work Australia<sup>2</sup> for accident pay applying to a worker in respect of whom an indemnity is claimed under the endorsement.
4. If you renew your CMI policy, or if you complete and return CMI's proposal form<sup>3</sup> for policy without electing to extend the accident pay cover, you will have the benefit of the accident pay endorsement in clause 37 of the CMI policy. Clause 37 is at **Attachment 1** to this offer.

### Election to extend

5. If you accept this offer to extend the accident pay coverage, you will also have the extended accident pay coverage in clause 37A. Clause 37A is also at Attachment 1.
6. You can accept this offer by completing the election form at **Attachment 2** to this offer and returning it to CMI.
7. Remember, you will not be entitled to the extended accident pay coverage by merely renewing your CMI policy or completing the CMI proposal form. If you fill in the election form and return it to CMI, you will get the accident pay endorsement in clause 37 of the standard CMI policy and also the extended coverage in clause 37A.

### Clause 37

8. In order to assist you with deciding whether to choose the extended coverage, some differences between the cover in clause 37 and the extended cover in clause 37A are explained below. Ultimately, you must rely on your own enquiries and advice when making the decision.

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<sup>1</sup> Section 31 of the Coal Industry Act 2001.

<sup>2</sup> Formerly, a function of the Australian Industrial Relations Commission.

<sup>3</sup> The proposal form is at: <http://www.coalminesinsurance.com.au/workerscompensation.aspx>

9. One source of a worker's entitlement to accident pay for the purposes of clause 37 in the standard policy is *the Black Coal Mining Industry Award 2010* (the Award)<sup>4</sup> or a similar provision in an enterprise agreement. The Award (a "modern award" under the *Fair Work Act 2009*) only applies to "coal mining employees" as defined in the Award.
10. However, coal mining employees within the meaning of the Award will be excluded from the application of the Award if, at the relevant time, they have an annual guarantee of earnings which exceeds the threshold for "high income employees" under the *Fair Work Act 2009*.<sup>5</sup>
11. If you have employees:
- a. who are not coal mining employees for the purposes of the Award (and therefore not entitled to accident pay under the Award);
  - b. who are coal mining employees but who are "high income employees" (under the Fair Work Act 2009 - and therefore not entitled to accident pay under the Award);
  - c. who are entitled to accident pay under their common law contracts with you as if they were subject to the Award (but who are indeed not subject to the Award); or
  - d. whose common law contracts or enterprise agreements are silent with respect to accident pay, and:
    - i. you intended that a worker would be entitled to accident pay; or
    - ii. you have been in the practice of paying accident pay,then you are not entitled to indemnity under clause 37 of the standard CMI policy.

### **Clause 37A**

12. Clause 37A in the CMI policy provides for extended accident pay coverage, as outlined below.
13. If you employ a worker (or workers):
- a. who is not a coal mining employee for the purposes of the Award;
  - b. who is a "high income employee" for the purposes of the Award;
  - c. whose common law employment contract with you:
    - i. provides that the worker will be entitled to accident pay (where the worker is not subject to the Award); or
    - ii. is silent in relation to accident pay, and:
      1. you intended the worker to have the benefit of accident pay; or
      2. you have been in the practice of paying accident pay,

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<sup>4</sup> See the Black Coal Mining Industry Award 2010 at:  
[https://www.fwc.gov.au/documents/documents/modern\\_awards/pdf/ma000001.pdf](https://www.fwc.gov.au/documents/documents/modern_awards/pdf/ma000001.pdf)

<sup>5</sup> Unless they are covered by an individual statutory agreement.

d. whose enterprise agreement with you is silent in relation to accident pay, and:

i. you intended the worker to have the benefit of accident pay; or

ii. you have been in the practice of paying accident pay,

then you will be entitled to accident pay coverage under clause 37A in accordance with the capped amount in clause 37A, if you elect to have the extended coverage.

### **Cap**

14. If an employment contract or enterprise agreement provides for accident pay and also for the rate of accident pay, you will be indemnified at the rate of pay specified in the contract up to the maximum weekly amount specified in section 34 of the Workers Compensation Act 1987 (Act) for compensation at the time, even if the contractual rate is a higher rate than in the Award.

15. The current maximum weekly compensation amount currently specified in section 34 of the Act is \$2,224.00 per week, but that amount is subject to adjustment from time to time. The capped amount for accident pay under clause 37A will be determined by reference to that amount as may be adjusted from time to time.

16. If an employment contract or enterprise agreement provides for accident pay but not the rate, you will be indemnified at the rate of the worker's pay under the contract or agreement up to the maximum weekly amount specified in section 34 of the Act for compensation at the time, rather than at the rate in the Award.

17. If an employment contract or enterprise agreement does not provide for accident pay and:

a. you intended the worker to have the benefit of accident pay; or

b. you have been in the practice of paying accident pay,

then you will be indemnified at the rate of the worker's pay under the contract or agreement (as the case may be) up to the maximum weekly amount specified in section 34 of the Act for compensation at the time, rather than at the rate in the Award, if you elect to have the extended coverage.

18. An enforceable common law employment contract may exist when you engage a worker in the coal industry regardless of whether the contract was partly in writing or wholly verbal.

### **Period**

19. The period of the extended coverage will be for no more than 78 weeks provided the period of a worker's contract or agreement extends up to 78 weeks.

## **Premiums**

20. If you opt for clause 37A, there will be no extra premiums, fees or other costs to pay in the absence of any claims under the extended accident pay coverage in clause 37A.
21. An additional premium will be payable if you make a claim or claims under the extended accident pay coverage.
22. CMI can cancel the extended cover in accordance with the notice provisions in clause 37A, but not so as to extinguish CMI's liability for a claim made under clause 37A.

## **Policy document**

23. If you opt for clauses 37 and 37A in the CMI policy, you will not receive a policy document with clause 37A, in the absence of arrangements with CMI.
24. Instead, your workers compensation insurance policy with CMI will be taken to have clauses 37 and 37A inserted. CMI may, upon request, provide you with evidence that might reasonably be required to show that you are covered by clauses 37 and 37A in the CMI policy.

## **The election form**

25. If you wish to opt for clauses 37 and 37A for the period of your insurance cover, complete and sign the attached election form and post it or email it to CMI
26. The extended accident pay coverage in clause 37A will apply subject to CMI acknowledging to you, through the post or by email, that you will have the extended cover.

## **Coal Mines Insurance Pty Limited**

Date:

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## Attachment 1

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The term “FWA” means Fair Work Australia, its predecessor 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.

### **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 FWA, 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 FWA 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.
- 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 FWA 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 FWA 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 FWA.
- 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. if the notice is emailed, on the day that the Employer unequivocally acknowledges the notice by reply email.

### **37A. EXTENDED ACCIDENT PAY INDEMNITY**

The Insurer will, in addition to the indemnity in clause 37, for the period of a worker's contract and subject to the capped amount in this clause 37A, indemnify the Employer for accident pay which the Employer intended to pay, or is contractually or otherwise liable to pay, to a worker covered by the Policy where the worker is not entitled to accident pay under an industrial award order or determination made by FWA, on the following terms and conditions:

- a. In this clause 37A endorsement:
  - 1. "accident pay" has the same meaning as in an industrial award, order or determination of FWA for accident pay that could apply to a worker in the coal industry in New South Wales whether or not such industrial award, order or determination applies to the worker and/or the employer;

2. "worker's contract" means the common law employment agreement between the Employer and a worker whose employment is not subject to the industrial award, order or determination for accident pay;
  3. "enterprise agreement" means an enterprise agreement as defined in the Fair Work Act 2009 and covering the worker; and
  4. "industrial award, order or determination" includes an Enterprise Agreement.
- 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 37A(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 or enterprise agreement that has expired through the normal passage of time notwithstanding that:
1. the Employer's intention or liability is for accident pay to be payable for a time that will extend, or may extend, for a further period; or
  2. the industrial award, order or determination for accident pay:
    - adopted by or referred to in the worker's contract, and
    - made before the period of insurance,
- provides, or may provide, that the Employer's liability extends for a further period.
- d. Notwithstanding clause 37A(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 the Employer's intention or liability to pay accident pay is with respect to an industrial award, order or determination of FWA applying during the period of insurance which provides that liability to pay accident pay is for a period that extends beyond the duration of the worker's contract or enterprise agreement that has expired. In that event, the indemnity will be for the time that the Employer intends or is liable to pay accident pay.
- e. In the event the period of a worker's contract or enterprise agreement 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 Employer's intention or liability 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, including an increase in premiums precipitated by any claim by the Employer under this endorsement.
- g. If a dispute arises between the Employer and any worker or group of workers as to the Employer's intention or liability to pay accident pay or as to the extent of the Employer's intention or liability to pay accident pay under:

1. a worker's contract or an enterprise agreement;
2. a corporate policy or other document giving rise to a liability to pay accident pay; or
3. in relation to any provision of an award order or determination of FWA regarding accident pay that is adopted by or referred to in a worker's contract or enterprise agreement,

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.

- 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 extended accident pay indemnity referred to this endorsement provided that the cancellation of the extended 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.
- j. In the event the Employer makes a claim under this endorsement, the Insurer may require the Employer to produce evidence of the worker's contract, enterprise agreement or other document that may be relevant to a liability to pay accident pay:
  1. containing a provision to the effect that the Employer will pay accident pay in the nature of an accident pay entitlement in an industrial award order or determination made by FWA that could apply to a worker in the coal industry in New South Wales; or
  2. which is silent with respect to accident pay,  
as the case may be.
- k. For the purposes of clause 37A(j) above, the worker's contract may be wholly in writing, wholly verbal, or partly in writing and partly verbal, but the Insurer must be satisfied in its discretion that the worker's contract or enterprise agreement, or other document that may be relevant to a liability to pay accident pay:
  1. provides that the worker will be entitled to accident pay in the nature of an accident pay entitlement in an industrial award, order or determination of FWA

that could apply to a worker in the coal industry in New South Wales; or

2. although silent in relation to accident pay, the Employer:
  - intended the worker to have the benefit of accident pay; or
  - has been in the practice of paying accident pay,

in the nature of an accident pay entitlement in an industrial award, order or determination of FWA that could apply to a worker in the coal industry in New South Wales, before indemnifying the Employer under this endorsement.

- i. If a worker's contract or enterprise agreement provides for accident pay and also for the rate of accident pay, the Insurer will indemnify the Employer at the rate of accident pay specified in the contract or enterprise agreement up to the maximum weekly amount specified in section 34 of the Act for compensation at the time, even if the contractual rate is a different rate than in an accident pay entitlement in an industrial award, order or determination of FWA that could apply to a worker in the coal industry in New South Wales.
- m. If a worker's contract or enterprise agreement provides for accident pay but not for the rate of accident pay, the Insurer will indemnify the Employer at the rate of the worker's pay under the contract or enterprise agreement up to the maximum weekly amount specified in section 34 of the Act for compensation at the time, rather than at the rate of an accident pay entitlement specified in an industrial award, order or determination of FWA that could apply to a worker in the coal industry in New South Wales.
- n. If a worker's contract or enterprise agreement does not provide for accident pay but the Employer:
  1. intended to pay accident pay; or
  2. has been in the practice of paying accident pay,

then the Insurer will indemnify the Employer at the rate of the worker's pay under the contract or enterprise agreement up to the maximum weekly amount specified in section 34 of the Act for compensation at the time, rather than at the rate of an accident pay entitlement specified in an industrial award, order or determination of FWA that could apply to a worker in the coal industry in New South Wales.

- o. The Insurer acknowledges that for the purposes of its liability to indemnify the Employer under this endorsement, the worker may be covered by an industrial award order or determination made by FWA which provides for accident pay, but may be excluded from coverage for accident pay by legislation, especially sections 328-333A of the Fair Work Act 2009.