

# Extended Accident Pay Indemnity (Clause 37A)

## Information for employers



Coal Mines Insurance

The information in this document is intended as a general guide only. Ultimately, you must rely on your own enquiries and advice when deciding about extended coverage.

## Background

**Accident pay** is the difference between the weekly amount an employee is entitled to receive under Workers Compensation Legislation and the amount provided for in an award, enterprise agreement or common law employment contract.

Accident Pay Indemnity under Clause 37 of the Coal Mines Insurance Workers Compensation Insurance Policy (the Policy) indemnifies employers for their liability to pay accident pay to an employee.

Since 30 June 2013, CMI has offered to extend accident pay coverage under Clause 37A where there is **no liability** to pay accident pay but the employer intended for the employee to have the benefit of accident pay or has been in the practice of paying accident pay. Clause 37A has formed part of the Policy since 30 June 2013. There haven't been any substantive changes to Clause 37 or 37A since 2013, other than reducing the extended coverage period under 37A from 78 weeks to 52 weeks.

## Cover under the Policy

### Accident Pay Indemnity (Clause 37)

Clause 37 of the Policy indemnifies employers for the full rate of accident pay they are liable to pay under:

- the *Black Coal Mining Industry Award 2010* (the Award); or
- a similar provision in an enterprise agreement; or
- a similar provision in a common law employment contract.

CMI indemnifies employers for the full rate of accident pay under common law employment contracts pursuant to Clause 37 rather than Clause 37A. To avoid confusion, please disregard Clause 37A(2)(c)(i) of the Policy.

### Extended Accident Pay Indemnity (Clause 37A)

Clause 37A of the Policy indemnifies employers for accident pay where there is no liability to pay accident pay but the employer intends for the employee to have the benefit of accident pay or has been in the practice of paying accident pay.

This clause covers a small number of employees who regularly work on a mine site but are not coal mining employees for the purpose of the Award or are excluded from the Award because they are a high-income employee. A high-income employee is an employee who has accepted a written guarantee of annual earnings and is guaranteed to earn an annual amount which is more than the high income threshold<sup>1</sup>.

Clause 37A does not create an entitlement to accident pay for all employees covered under the Policy. The employer must intend for the employee to have the benefit of accident pay or has been in the practice of paying accident pay. If an employee does not regularly work on a mine site and/or is employed under an award that does not allow for accident pay, it is unlikely that accident pay will be covered under Clause 37A.

Under Clause 37A, CMI indemnifies the rate of the employee's pay up to the maximum weekly compensation amount<sup>2</sup> in section 34 of the *Workers Compensation Act 1987* for no more than 52 weeks.

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. However, as accident pay payments are included in claims costs, these payments may be included in your premium calculation if you make a claim or claims under the extended accident pay coverage depending on whether you are a **Small Employer**<sup>3</sup> or a **Large Employer**<sup>4</sup>.

<sup>1</sup> This threshold is adjusted annually on 1 July. From 1 July 2020 to 30 June 2021 the threshold is \$153,600.00

<sup>2</sup> The maximum weekly compensation amount is indexed biannually and published by the State Insurance Regulatory Authority (SIRA). From 1 April 2021 to 30 September 2021 the rate is \$2,254.60.

<sup>3</sup> Small Employer means those with wages less than or equal to \$2.5m.

<sup>4</sup> Large Employer means those with wages greater than \$2.5m.