

# CMI Scheme update

## Recoveries Policy

### *Approach to third party recoveries*



Coal Mines Insurance

Coal Mines Insurance (CMI) is the specialised workers compensation insurer for the NSW coal industry. CMI indemnifies employers for their workers compensation liability and workers compensation is provided under a 'no fault' compensation system.

However, where CMI makes workers compensation payments to a person who has been injured due to negligence (or 'fault') of a party other than their employer (a 'third party'), CMI may have a right to recover those payments.

One of CMI's main objectives is to ensure the NSW coal industry workers compensation scheme is fair, equitable and sustainable. To achieve this, it is important that the CMI scheme doesn't carry liabilities (and related costs) that are properly owned elsewhere.

### What is CMI's recoveries policy?

CMI has always maintained the right to recover these payments, however our *Recoveries Policy: Approach to third party recoveries* (the policy) was revised in late 2019 to introduce measures that better identify potential recoveries and to ensure there is consistent decision making.

The policy relates to instances where CMI seeks recovery, or contribution/apportionment toward a workers compensation or common law claim from a third party where such potential has been identified.

CMI has conducted extensive consultation with industry over the last 18 months which has helped inform certain revisions to the policy.

### What happens where the third party also holds a policy with CMI?

In many instances the third party will not have a relationship with CMI or the employer. Yet given the nature of the CMI Scheme, the potentially negligent third party that we intend to pursue for recovery could also be a CMI policyholder.

Where this is the case, CMI has introduced a communication protocol to provide transparency to both the employer and third party. The opportunity to have a dialogue at this point is unique to the CMI Scheme and the information that is exchanged can be very important.

### What has been updated in the policy?

Based on feedback received from industry during the consultation process, the following revisions were made to the policy:

- CMI introduced a **\$50k minimum cap** in order to seek recovery from a party who is also a CMI policyholder.
- Enhancements to the **Dispute Resolution** framework were introduced
- An **Independent Review Process** has been introduced should a policyholder disagree with CMI's intention to seek recovery. The review will be performed by a lawyer with no relationship to either party or CMI who will be asked to consider the reasonableness of CMI seeking recovery given the circumstances.

### What are the benefits of a recoveries program?

A robust and diligent approach to identifying claims where there may be recovery potential, and that right to recover is pursued, presents the following benefits:

- The financial position of the CMI Scheme is improved
- Where CMI intends to seek recovery, the incurred costs of that claim will reduce proportionate to the anticipated recovery.

### When will the policy be implemented?

The *Recoveries Policy: Approach to third party recoveries* will be implemented from Monday, 27 February 2023.

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### If you have any questions please contact:

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