CLAIM PAYMENTS BY EMPLOYERS

To avoid an experience Premium or the involvement of a Scheme Agent in Injury management following a workplace Injury, some Employers may seek to meet liabilities for Workers Compensation themselves, and/or manage Claims, rather than lodging a Workers Compensation Claim on behalf of the Worker.

Section 155 of the 1987 Act provides that Workers Compensation insurance is compulsory for Employers.

Section 234 of the 1998 Act prohibits contracting out of the Workers Compensation legislation.

Under Policy condition 5 of the Employer's Insurance Policy, insurers are directly liable to Workers for Claims made under the Act.

A Scheme Agent must meet Claims and manage Injuries, and cannot delegate these responsibilities to an Employer, such as making arrangements for an Employer to pay Claims liabilities (usually weekly Benefits) directly and then not recovering those payments from the Scheme Agent.

The Nominal Insurer remains liable to the Worker to pay Benefits and the Act does not allow the Nominal Insurer, an Employer or a Worker to contract out this liability.

A Scheme Agent must maintain estimates of the amounts the Employer has paid, as well as an appropriate estimate of other liabilities – ie. a proper estimate of the Nominal Insurer's full liability – until such time as all payments have been made on the Claim and the Nominal Insurer's liability is extinguished.

Where an Employer has made Workers Compensation payments to the Worker, the Scheme Agent must obtain details and reimburse the Employer. Where such a liability exists, the Scheme Agent must maintain a Claims estimate to cover the liability and must not close the Claim until all payments are made.

References

Workers Compensation Act 1987, section 155

Workplace Injury Management and Workers Compensation Act 1998, section 234

Workers Compensation Regulation 2003, Form 3

Deed, Schedule 2, clause 2.6.1

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