NSW WorkCover Scheme

ADMINISTRATION OF POLICIES

Workers Compensation is a compulsory requirement for all Employers. The 1987 Act requires Employers to hold and maintain in force a Workers Compensation insurance Policy. Section 155A provides that Workers Compensation Policies are to be for 12-month periods, unless WorkCover approves otherwise in a case or a class of cases. Section 157 provides that the Nominal Insurer must accept any proposal for insurance and must not refuse to renew any Workers Compensation insurance Policy without WorkCover's approval.

This operational instruction sets out:

(a) the classes of cases for which WorkCover has approved a period of less than 12 months for Policies and the procedures for issuing Policies for periods of insurance other than 12 months

(b) the classes of Policies that may be cancelled and the circumstances under which this power can be exercised by a Scheme Agent.

Policy periods other than 12 months

Grouping

Following a review of the NSW Premium system, WorkCover is introducing grouping of related Employers for Premium Calculation purposes from 30 June 2006.

Employers subject to grouping provisions commencing 30 June 2006 must insure with the same Scheme Agent as other Employers in the group and must ensure that all Policies held by members of the group have a common renewal date. As a consequence, an Employer may need to shorten a period of insurance or cancel a Policy in order to comply with grouping requirements.

In the following circumstances, where an Employer is subject to grouping, a Scheme Agent may shorten a period of insurance to a term less than 12 months, or cancel a Policy, to:

(a) align the due date of the Policy with other members of the group, or

(b) transfer the Policy to another Scheme Agent who holds the Policies of other group members.

In such circumstances, a Scheme Agent must verify details of the new Scheme Agent and/or the commencement date of other group Policies prior to shortening the term of a Policy or cancelling a Policy for grouping purposes. A Scheme Agent should not shorten a period of insurance or cancel a Policy where these details cannot be verified.

A Policy is not be shortened to a date between 31 March 2006 and 30 June 2006 unless approved by the Manager, Appeals Branch at WorkCover

A Policy with an annual basic tariff premium in excess of $3,000 that has a shortened term of insurance to prepare for the implementation of grouping may, in certain circumstances, be paid by instalments. The following arrangements apply:

(a) a Premium cannot be paid by instalments where the Policy is shortened to a period of less than four months

(b) a Premium may be paid with a deposit instalment and one instalment where the Policy is shortened to a period of between four and eight months

(c) a Premium may be paid with a deposit premium and two instalments where the Policy is shortened to a period of eight months or more.

Other circumstances

WorkCover gives approval to a Scheme Agent to issue or renew Policies for periods of less than 12 months in certain other circumstances. These circumstances apply in one or both of the following cases:

(a) another entity acquires the Employer and wants to shorten the period of insurance to synchronise its expiry with its insurance

(b) the Employer wants to synchronise the expiry date of the period of insurance with 30 June or some other accounting date that is standard for the enterprise.

If it meets the requirements of the cases stated above, the Policy must run to the expiry date and then be renewed for a shortened period.

A Policy must not to be shortened to a date between 31 March 2006 and 30 June 2006, unless approved by the Manager of WorkCover's Appeals Branch.

WorkCover does not give approval for a Scheme Agent to:

(a) issue or renew Policies for periods longer than 12 months

(b) shorten a period of insurance to allow an Employer to obtain a Premium reduction following the issue of an Insurance Premiums Order

(c) shorten a period of insurance because the Employer no longer employs Workers

(d) shorten a period of insurance mid-term so that a Policy period is short-termed during a current period of insurance, except where it is necessary to enable an Employer to comply with grouping provisions by 30 June 2006.

Cancellation of Policies

Classes of Policies eligible for cancellation

WorkCover has approved the cancellation of certain classes of Workers Compensation Polices before the conclusion of their 12-month period. A Scheme Agent may cancel Policies regardless of the circumstances – eg. operation of Policy condition 17: forced raised Premium.

Policies can be cancelled where:

(a) The Employer ceases trading. A Scheme Agent must have sufficient evidence on file to prove the Employer has ceased trading. The return of unclaimed mail is not acceptable evidence.

(b) The Employer ceases trading following appointment of a liquidator or trustee in bankruptcy, except when a liquidator or administrator is appointed and the Employer continues trading. In this case, the Policy with the Scheme Agent continues and cannot be cancelled, even if the liquidator or administrator attempts to affect a new Policy. The Scheme Agent must record that the company is in liquidation or under administration. Where a company is under administration, there is legal precedent to establish that the first Scheme Agent is entitled to proof of debt in respect of all unpaid Premiums.

(c) The Employer has sold the business and would not need a Policy of insurance as required by section 155 of the 1987 Act.

(d) The Employer wishes to transfer the Policy to another Scheme Agent to comply with grouping provisions.

The date of the cancellation must be at least seven days after the notice of cancellation is given to the Employer, as required by Policy condition 18.

Cancelling automatically-renewed Policies

As outlined in operational instruction 2.3, the Nominal Insurer has instructed a Scheme Agent to renew all Workers Compensation Policies in order to give effect to the legislative policy of ensuring that all Workers are covered by Workers Compensation Policies. Policies that have been automatically renewed in accordance with Policy condition 17 will remain in force until the expiry date.

WorkCover will not approve the cancellation of policies, except those policies within the classes of policies outlined above. If a Policy has been automatically renewed, and it is subsequently found to fall within one of the classes referred to above, the Policy is to be cancelled from the commencement date of the current period of insurance. In these cases, the Premium must be reversed, not written off. Any recovery costs incurred before notification of such an automatic renewal is to be charged to the Workers Compensation Insurance Fund. A Scheme Agent must establish conclusively that the Employer has ceased trading before the Policy is cancelled and the Premium reversed.

Dual insurance

Operational instruction 2.3 may give rise to Employers holding two Workers Compensation Policies. This will occur if a Scheme Agent – ie. the first Scheme Agent – arranges for the automatic renewal of a Workers Compensation Policy while the Employer chooses a new Scheme Agent – the second Scheme Agent. When this happens:

(a) the first Scheme Agent must issue Premium Calculation forms and the Premium Demand

(b) if a Premium is raised in accordance with the Insurance Premiums Order – eg. schedule 1, clause 8 of the Insurance Premiums Order 2005/06 – and is not paid to the first Scheme Agent, the Scheme Agent must commence normal debt recovery procedures

(c) the second Scheme Agent must cancel the new Policy, reverse the Premium and refund the Employer any Premium paid with appropriate advice of the reason for cancellation – the new Scheme Agent may forward the Premium refund directly to the first Scheme Agent if the Employer agrees

(d) if the Employer has paid the Premium to the second Scheme Agent by the due date, and the second Scheme Agent subsequently pays the Premium to the first Scheme Agent, the Employer retains any entitlement to statutory instalments

(e) if the Employer has paid a Premium to the second Scheme Agent but not to the first Scheme Agent, then the first Scheme Agent cannot write off any debt recovery costs incurred – the Employer remains responsible for these costs

WorkCover will only consider a request from a Scheme Agent to approve cancellation of the first Scheme Agent's Policy if:

(a) the Employer took out a Policy with another Scheme Agent before the first Policy expired

(b) the new Policy has a commencement date equal to the expiry date of the first Policy

(c) the Employer can demonstrate that the first Scheme Agent did not forward the Employer a notice of renewal, as required by operational instruction 2.3.

WorkCover will not approve cancellation of automatically-renewed Policies to assist debt recovery, or for similar reasons.

Cancelling Policies by agreement between Scheme Agents

In cases of dual insurance, where both Policies have the same commencement date, WorkCover will agree to the first Scheme Agent cancelling a Policy from the commencement date of the current insurance period, provided that both Scheme Agents agree. In this situation, the arrangements for payment and transfer of Premiums set out above apply.

WorkCover will not agree to the first Scheme Agent cancelling a Policy where the commencement date of the replacement Policy is not equal to the expiry date of the first Policy, and a gap in insurance or a period of non-insurance will ensue.

Cancelling policies for other reasons

Cancellation of a Policy for reasons other than those described above require written consent from WorkCover before the Policy is cancelled.

WorkCover does not give consent to a Scheme Agent to cancel a Policy mid-term if the Employer can take out a new Policy at a lower Premium following the issue of an Insurance Premiums Order, or because the Employer no longer has Workers.

Requests for approval

All requests for Policy approval and cancellation that are not specifically covered in this operational instruction must be submitted, in writing, to:

The Manager

Appeals Branch

Locked Bag 2906

LISAROW 2252

Fax: (02) 4325 4760

References

Workers Compensation Act 1987, sections 155, 155A, 157

Workers Compensation Regulation 2003, clauses 130-133, Form 3

Insurance Premiums Order

Operational instruction 2.3