

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 16: Workers Compensation Insurance Policies

October 2023

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Workers Compensation Insurance Policies

Scope

This document outlines proposed regulations and implementation requirements associated with workers compensation insurance policies under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*. Matters covered include:

- the wording, terms and form of the standard workers compensation policy to be adopted by licensed insurers
- workers compensation policy exclusions
- the proposed Acts of Terrorism claim limit
- the permitted circumstances for refusing indemnity
- the WorkCover WA remuneration guidelines to be used by employers in making remuneration declarations at policy inception and renewal
- the information insurers require from employers to issue a policy or provide a quote of the premium.

Background and intent

The general approach in the 1981 Act is that employer indemnity is largely a contractual matter dealt with in the workers compensation insurance policy with the 1981 Act impinging on the scope of the indemnity and insurance policy contractual terms in limited circumstances.

The current employer indemnity policy used in the WA workers compensation scheme was developed by the insurance industry in the 1990s as a means of standardising indemnity arrangements and was last amended in 2011. Use of the current policy relies on an informal commitment from insurers rather than legislative and regulatory requirements. There is currently no formal impediment to alternative or additional policy conditions or terms being added by insurers.

The general approach in the *WCIMA23* reverses this and provides for the regulations to specify the terms, conditions and form of the workers compensation policy. The *WCIMA23* also expressly prevents an insurer from refusing indemnity other than in the circumstances permitted in regulations (s. 241 of the *WCIMA23*) and prevents insurers limiting indemnity due to misrepresentations by the employer (s. 240 of the *WCIMA23*).

Regulations also deal with matters such as limits and exclusions in workers compensation insurance policies and provide for the terms of adjustable premium policies to be regulated.

The regulations provide for specific information to be given to insurers by employers to ensure insurers have adequate and accurate information in order to provide a quote of premium before issuing a workers compensation insurance policy. It is intended WorkCover WA will issue formal remuneration guidelines to facilitate the remuneration declaration process at policy inception and renewal.

WCIMA23 key provisions

s. 202, s. 203, s. 236, s. 237, s. 238, s. 291, s. 593.

Section 202 establishes the obligation of an employer to have a current workers compensation policy for the full amount of the employer's liability to pay compensation and damages to the employer's workers.

Section 203 provides for employers to provide a statement of estimated 'remuneration' (remuneration defined by regulations) when applying for the issue or renewal of a workers compensation policy and a statement of actual remuneration paid over the previous policy period.

Section 236 establishes the obligation of a licenced insurer to insure employers and the obligation for an employer applying for the issue or renewal of a workers compensation policy to provide to the licensed insurer any other information required by the regulations. This is to enable the insurer to have sufficient information about the risk profile of the employer in order to issue or renew the policy or provide a quote of the premium payable.

Section 237 provides for the form, content, terms and conditions of a workers compensation policy to be prescribed in regulations. This will ensure workers compensation policy key terms are standardised in regulations, rather than as contractual conditions made by an insurer at its discretion.

Section 237 also provides for regulations to limit, modify or exclude any requirement for employers to have a workers compensation policy in respect of certain liabilities (e.g. to pay damages in respect of a claim brought for an injury occurring outside of Australia), or to limit the amount insured (e.g. aggregate amount of damages arising out of all claims in respect of a single event).

Section 238 provides a framework for adjustable premium policies (also known as burning cost policies). An adjustable premium policy means a workers compensation policy that provides for the adjustment of the premium for the policy during the period of insurance under the policy with adjustments determined on the basis of the claims experience of the employer during the period of insurance. Where there is an adjustable premium policy between an insurer and an employer the right to have the premium reviewed by WorkCover WA is not available.

Section 291 provides for regulations to impose a claims limit on liability for compensation for all employers associated with an act of terrorism with claims funded from the Default Insurance Fund.

Section 593 provides for savings and transitional arrangements relating to workers compensation policies issued before commencement of the *WCIMA23*.

Regulations

Standard workers compensation insurance policy

In respect of workers compensation policies issued by insurers it is intended the regulations will provide:

A workers compensation policy issued to an employer must contain the provisions and be set out in the form of the standard policy contained in the regulations.

See Attachment 1: [Prescribed Form of Workers Compensation Policy](#).

Some terms and conditions in the standard policy refer to matters that are provided for in the *WCIMA23* or regulations but are restated to provide a complete picture.

The policy to be prescribed is similar to the current informal standard policy generally adopted in the insurance industry under the 1981 Act, with updated terminology and provisions consistent with the *WCIMA23* and regulations. However, the 'reasonable precautions' condition contained in the current policy wording has not been replicated and is discussed below (refusal of indemnity).

Conditions and riders which limit, modify or are otherwise inconsistent with the terms of the standard policy are not permitted.

This does not limit the ability to make additions to the policy via the policy schedule to deal with things like:

- name of the insured, the policy period for the policy, the premium to be paid and payment schedule
- if an adjustable premium policy, the agreed adjustment method
- details of another covered entity for which the insurer confirmed acceptance of an extension of the policy by endorsing the Schedule
- any agreement to pay damages above the \$50 million cap
- any agreement to cover overseas workers beyond 24 months
- details of any NDIS or domestic arrangements (if covered).

There is no intention to prohibit or prescribe the terms of endorsements, waivers or contractual indemnities in regulations at this time, though any offered cannot conflict with the *WCIMA23* or the standard policy terms and conditions.

Remuneration declarations

In respect of the remuneration declarations to be made by employers it is intended the regulations will call up by reference the *WorkCover WA Remuneration Guidelines* (see Attachment 2: [Remuneration Guidelines](#)). No changes to these guidelines will be made at this time. There is no intention to mandate a remuneration declaration form.

WorkCover WA will publish an *industry classification order* which will maintain the current list of industry premium classifications based on ANZSIC 2016.

Information required to issue policy or provide quote

It is intended regulations will specify the following information (in addition to a remuneration declaration) is to be provided by employers in order for insurers to issue a workers compensation policy or provide a premium quote:

- a description of the employer's business and the activities undertaken by workers employed or engaged by the employer
- a statement as to whether the employer has a current workers compensation policy or has held a workers compensation policy
- the total number and details of the cost of workers compensation claims made by the employer's workers in the previous 5 years

- a copy of the employer's risk management/ workplace health and safety plan to prevent and manage injuries in the workplace
- if the employer is a principal or contractor, records of aggregate payments made to contractors, including the dates of payment and the amounts. For example: labour only; labour and materials; labour materials and plant; or labour and plant
- if the employer is a principal or contractor, copies of certificates of currency for subcontractors with workers in respect of which the employer could be a deemed employer under the *WCIMA23*
- if the employer is a working director, information to substantiate the statement of estimated remuneration and evidence of the fact the person is providing personal manual labour or service and deriving earnings
- details of any contractual indemnities entered into by the employer or for which indemnity is intended to be provided to a principal or other third party in the employer's workers compensation policy as an endorsement (if permitted by the *WCIMA23* or insurer).

Refusal of indemnity – permitted circumstances

An insurer may not refuse to indemnify an employer against liability unless authorised by the regulations to do so. It is intended the regulations will provide the following permitted circumstances in which an insurer may refuse indemnity:

1. An insurer may refuse indemnity where through the employer's act or omission the employer failed to take reasonable precautions (meaning the conscious disregard of a recognised risk either deliberately or recklessly) and the employer's act or omission caused or contributed to the injury for which damages (only) are claimed.
2. An insurer may not refuse to indemnify an employer against liability to pay compensation or damages for any other reason or act or omission of the employer under the workers compensation policy.
3. However, subject to (2) and any provision of the *WCIMA23*, the insurer's liability to indemnify the employer is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the act or omission of the employer. The onus of proving that the insurer's interests were prejudiced by the act or omission by or on behalf of the employer and the extent of that prejudice is on the insurer.

An insurer which refuses to indemnify an employer for a claim must notify the WorkCover WA CEO within 7 days of advising the employer.

The proposed permitted circumstances for insurers refusing indemnity are similar to section 174A of the 1981 Act but remove the ability of insurers to refuse indemnity on the basis of a breach of a policy condition by the employer.

The proposed regulation is required to prevent indemnity refusal simply for an employer's breach of a condition of the policy. The failure of an employer to take 'reasonable precautions' to prevent injury (a condition of the current policy terms that is not replicated in the proposed standard policy terms at Attachment 1) has sometimes been used by insurers under the 1981 Act to refuse indemnity for large common law claims involving significantly injured workers.

Without regulated checks and balances, refusal of indemnity based on a breach of any policy condition:

1. creates inconsistency, delays and uncertainty for injured workers and requires the matter of indemnity to be determined in court before the claim can be finalised
2. requires WorkCover WA to manage denied indemnity claims and make payments from a fund set up to cover the cost of uninsured claims, making it difficult to estimate future liability (and the associated levy) of the Default Insurance Fund
3. results in all insurers and self-insurers ultimately contributing to the cost of claims which the insurer refuses to indemnify via annual levy contributions
4. undermines the purpose of the requirement for employers to hold a policy of insurance for statutory compensation on a no-fault basis and insurance for damages for the employer's negligence.

It is only where the employer failed to take reasonable precautions (meaning the conscious disregard of a recognised risk either deliberately or recklessly) and the employer's act or omission caused or contributed to the injury for which damages (only) are claimed, will indemnity refusal be permitted.

Adjustable premium policies

There is no intention to introduce regulations to impose additional requirements or reporting obligations in relation to adjustable premium policies. The standard workers compensation policy terms and conditions apply with a modification to the terms relating to premium calculation and adjustment (see prescribed workers compensation policy terms).

Exclusions

It is intended the regulations (consistent with regulations under the 1981 Act) will provide an employer is not required to obtain or keep current workers compensation policy for compensation under the *WCIMA23* or damages arising out of –

- (1) (a) a claim directly or indirectly occasioned by any event happening through or in consequence of:
 - (i) war; or
 - (ii) invasion; or
 - (iii) acts of foreign enemies; or
 - (iv) hostilities whether war be declared or not; or
 - (v) civil war; or
 - (vi) rebellion; or
 - (vii) revolution; or
 - (viii) insurrection; or
 - (ix) military or usurped power;
- or
- (b) a liability covered by an industrial diseases policy (s. 162 of the 1981 Act)

- (2) Liability to pay damages arising out of —
 - (a) a claim brought in respect of an injury occurring outside Australia; or
 - (b) a claim brought outside Australia.
- (3) Liability to pay —
 - (a) exemplary or punitive damages; or
 - (b) an aggregate amount of damages exceeding \$50,000,000 arising out of all claims in respect of a single event.

Limits on claims for declared acts of terrorism

It is intended the regulations will specify the “claims limit” that applies for the purposes of s. 291(2)(a) of the *WCIMA23* in any financial year will be **\$100 million** (whether or not the total claims result from one or more declared acts of terrorism).

The proposed acts of terrorism claims limit of \$100 million was foreshadowed in consultation on the Bill in 2021 and WorkCover WA’s 2014 Final Report.

An increase in the cap from \$25 million (in the 1981 Act) to \$100 million per event or period (to be in regulations) provides a balance between increased protection for injured workers and providing a greater degree of certainty for insurers regarding maximum liability and capital requirements in any given insurance period.

Submissions from the insurance industry during consultation on the 2021 Bill raised concerns with the impact of an increase in the acts of terrorism claims limit on licensed insurer capital requirements. Submissions did not appear to be opposed to the \$100 million limit but proposed alternative proposals to how the potential liability should be funded.

The *WCIMA23* provides for funding the potential terrorism liability through a levy on licensed insurers and self-insurers. Arrangements for the levy for the financial year of commencement will be considered by the WorkCover WA Board closer to the commencement date of the *WCIMA23*. The WorkCover WA Board will consider actuarial advice to determine any initial levy contribution required from insurers and self-insurers to the Default Insurance Fund. As part of this assessment the WorkCover WA Board will consider options to minimise capital impacts on insurers and self-insurers associated with the increased acts of terrorism claims limit to \$100 million.

Cancellation

It is intended the regulations will specify **90 days** from the commencement of the policy period specified in the workers compensation policy as the period any premium due is unpaid before a licensed insurer can be permitted to cancel a workers compensation policy (s. 242 of the *WCIMA23*).

Other regulations

No regulations will be made to prescribe additional remuneration records a principal contractor is required to keep (s. 221 of the *WCIMA23*).

Transitional

The *WCIMA23* provides that a workers compensation policy issued under the 1981 Act before commencement of the *WCIMA23* insures an employer for liabilities that arise under the 1981 Act or the *WCIMA23* in respect of employment during the period of that insurance policy. The repeal of the 1981 Act does not affect the validity of the policy issued under the 1981 Act. However, the indemnity refusal provisions of s. 241 of the *WCIMA23* apply to any policy issued before the commencement date of the *WCIMA23*.

In practice this means insurers do not have to reissue workers compensation policies to insured employers who have current workers compensation insurance policies in place on the commencement date of the *WCIMA23*. In these circumstances insurers will have to issue a new policy in accordance with the *WCIMA23* and the prescribed policy at Attachment 1 when the period in the policy that was issued before the commencement date of the *WCIMA23* expires.

Process overview

Other than the regulations outlined in this document there will be no changes or new obligations in relation to the way in which insurers issue or renew workers compensation policies. Insurers will continue to issue workers compensation policies using their own branding.

WorkCover WA expectations

WorkCover WA expects insurers to:

- adopt the standard policy for all new and renewed policies after the implementation date
- advise insured employers of the new policy wording as part of the new policy and renewal process
- apply the WorkCover WA Remuneration Guidelines in assessing wage declarations.

Evaluation and monitoring

As part of its audit program WorkCover WA will ensure:

- the standard policy is issued for all new and renewed policies after the commencement day of the *WCIMA23*
- claim liability and other decision making is consistent with the *WCIMA23*, standard policy and regulations.

Attachments

1. Prescribed Form of Workers Compensation Policy
2. Remuneration Guidelines

Attachment 1: Prescribed Form of Workers Compensation Policy

Preamble

Under the *Workers Compensation and Injury Management Act 2023* an employer must obtain from a licensed insurer a workers compensation policy for the full amount of the following liabilities of the employer that arise in respect of employment during the period of insurance —

- (a) any liability of the employer that arises under the Act to pay compensation or make any other payment in respect of an injury to or the death of a worker;
- (b) any liability of the employer to pay damages in respect of an injury to or the death of a worker if the employer is liable to pay compensation under the Act in respect of the injury or death, other than an injury to or the death of a deemed worker (as defined in the Act) of the employer.

The words “we”, “us” and “our” in this document refer to [insert name of insurer], which is a licensed insurer.

The words “you” and “your” in this document refer to the employer named in the Schedule to this document.

You (the employer) described in the Schedule to this policy have applied for the issue or renewal of a policy and provided the required information to be covered by this policy upon payment of an agreed premium. That application and the supporting information including the remuneration declaration contain the particulars and statements which the Employer and Insurer agree are the basis of this policy and form part of this policy.

This policy covers only the employer entity described in the Schedule unless details of another entity have been supplied to us and we have confirmed its acceptance of the extension of the policy by endorsing the Schedule accordingly.

We have agreed to issue this policy to cover you for the policy period, on the following terms. The premium that you must pay us, and the policy period are set out in the Schedule. The premium is subject to adjustment as set out in the Conditions below.

Definitions

The following definitions apply to the words used in this policy.

“Act” means the *Workers Compensation and Injury Management Act 2023* as amended from time to time, including any subordinate rules and regulations.

“acts of terrorism” means ‘act of terrorism’ as defined in the Act, s. 287.

“contractors” means any individuals contracted by you for the performance of work of a kind described in the Act s. 12(2)(c).

“damages” means ‘damages’ as defined in the Act s. 200.

“injury” means ‘injury’ as defined in the Act, s. 6.

“policy” means ‘workers compensation policy’ as defined in s202 of the Act and includes this document, the Schedule, any endorsement, the application for this policy, a cover note and any remuneration declaration, estimate or supporting information required by the Act or Regulations pertaining to the policy or the policy period.

“policy period” means the period of insurance commencing at 4.00pm on the start date shown in the Schedule and ceasing at 4.00pm on the end date shown in the Schedule, and any subsequent period for which the policy is renewed.

“remuneration” means remuneration as defined by the Act, s. 200 and any subordinate regulations, rules or guidelines issue by WorkCover WA.

“Schedule” means the document pertaining to this policy and titled “Policy Schedule”.

“worker” means:

- (a) a person who is defined a ‘worker’ by the Act, s. 12, or by regulations under s. 13;
- (b) a person in respect of which you are taken to be an ‘employer’ under section 215 (contractor or principal);
- (c) a person in respect of which is found to have been doing work for you under an avoidance arrangement under s. 225;
- (d) a ‘working director’ as defined in section 16 of the Act if you have complied with Part 5 of the Act for the issue or renewal of a workers compensation policy on the basis that a working director of the company is a worker.

Liability for compensation

If you are liable under the Act to pay compensation or any other payment in respect of an injury or death to a worker from employment during the period of insurance, we will indemnify you against that payment and in addition, will pay all reasonable costs and expenses you incur with our written consent.

Liability for damages

If:

- (a) you are liable to pay damages in respect of an injury or death to a worker from employment during the period of insurance;
- (b) a worker is entitled to recover from you in respect of the injury both workers compensation under the Act and damages (subject to Part 7 Division 3 of the Act), or would have been entitled to so recover from you in respect of the injury if he or she had not died,

then we will indemnify you against any damages you are liable to pay and any reasonable costs and expenses you incur for that liability with our written consent, subject to any limits and exclusions authorised under the Act or regulations and the conditions of this policy.

Policy Limit on Liability for Damages

We will not pay more than the agreed amount specified in the Schedule for liability to pay damages (an amount that is not less than an aggregate amount of damages exceeding \$50,000,000) arising out of all claims in respect of a single event, regardless of how many workers are injured.

Exclusions applicable to both Compensation and Damages:

The following exclusions apply to the liability for compensation and the liability for damages.

We will not indemnify you for any liability to pay compensation or damages in respect of:

- (a) a declared act of terrorism under the Act (s. 289)
- (b) a claim directly or indirectly occasioned by any event happening through or in consequence of war, invasion, acts of foreign enemies, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power (authorised by regulation x)
- (c) any permitted circumstances set out in regulations under section 241 of the Act that permit us to refuse indemnity against a liability for compensation or damages, or both.

Exclusions applicable to Damages only:

The following exclusions apply to the liability for damages.

We will not indemnify you against liability to pay damages:

- (a) to anyone other than the worker who suffered the injury, except for liability under the Acts mentioned in the definition of “damages” in section 200 of the Act;
- (b) in respect of a claim brought in respect of an injury occurring outside Australia or a claim brought against you outside Australia (authorised by regulation X);
- (c) to:
 - (i) a person of whom you are taken to be an employer only by virtue of section 215 of the Act (a principal); and
 - (ii) a person in respect of which is found to have been doing work for you under an avoidance arrangement under s. 225
- (d) in respect of exemplary or punitive damages (authorised by regulation X).

Conditions

The insurance cover provided by this policy is provided upon the following additional terms:

1. *Misrepresentation*

Subject to section 240 of the Act, the proposal for this insurance, and any other information supplied to us by you or on your behalf, form the basis of this policy and must contain no misrepresentations, whether innocent or otherwise.

2. *Notices*

Every notice or communication given or made to us under this policy must be delivered in writing to our office from which the policy was issued. Delivery in writing may be electronic.

3. *Notice of Injuries*

You must notify us of any injury as soon as practicable after you (or a representative) receives information about the occurrence of an injury or about any incapacity arising from an injury. You must send us every written notice of claim or legal proceedings and information as to any verbal notice of claim or legal proceedings, immediately after you receive it.

4. *Litigation, Settlement or Admission of Liability*

You must not, without our written authority, incur any litigation expense, or make any payment, settlement or admission of liability, in respect of an injury to or claim made by a worker.

5. *Defence of proceedings, subrogation & use of your name*

We are entitled to use your name in respect of anything indemnified under this policy, in any legal proceedings, and to exercise any rights you may have against anyone to recover any payments that we make on your behalf. We are entitled to be subrogated to all rights that you may have against any persons who may be responsible in relation to a claim for an injury covered by this policy. When we require it, you must execute any necessary documents to assist us in taking action in your name.

6. *Your assistance*

In respect of any injury, you must give us any information, documents and assistance we request, and otherwise cooperate with us in the management, defence or settlement of any claim.

7. *Right of Inspection:*

After an injury to a worker, you must (as far as reasonably practicable), not alter, repair or dispose of any works, machinery, plant, tools or equipment involved in the injury or documents pertaining to the injury without our consent (which will not be unreasonably withheld).

We may, at all reasonable times, inspect the works, machinery, plant, tools, equipment and documents pertaining to the injury.

8. *Premium calculation*

Unless you have an adjustable premium policy, the first premium and every renewal premium payable to us will be calculated on the amount of the remuneration you estimate you will pay or be liable to pay during the year following the issue or renewal of the policy. Your estimate must include all amounts you estimate you will pay contractors.

9. *Adjustment of premium*

You must provide to us within one month after the expiry of each year of the policy period, a statement of the aggregate amount of all remuneration paid or payable by you in fact in that year, and when required, the number of workers and contractors you employed or engaged in that year. The remuneration you declare must include all payments you made to contractors. Unless you have an adjustable premium policy, if the amount of the remuneration, the number of workers and contractors or the type of business in which they were engaged, differs from the information on which the premium for that year was calculated, the premium will be adjusted and you must pay a further premium to us or we will refund premium to you, subject to our retaining a customary minimum premium.

10. *Remuneration Records*

You must keep accurate and up-to-date records (“your remuneration record”) of the names of, amounts you pay to, and dates of payments to your workers and contractors. A remuneration record is not required to be kept or provided by an employer who is a principal with respect to remuneration paid to contract workers employed by a contractor if the contractor holds a workers compensation policy that extends to indemnifying the principal, but details of the workers compensation policy under which the principal is indemnified are to be kept and provided at the issue or renewal of a policy (s. 221).

11. *Inspection or audit of Remuneration Record*

You must at all times (not limited to the policy period) allow any officer authorised by us to inspect or enable an audit to be undertaken of your remuneration record and any other record of information given to us relevant to the calculation of premium.

12. *Assignment*

You must not assign your interest in this policy without our written consent.

13. *Waiver*

You must not rely on any waiver of any provision of this policy unless we have confirmed the waiver to you, in writing.

14. *Cancellation*

Subject to our being permitted by WorkCover WA to do so, we may cancel this policy and, in that event, you must supply us with a correct account of all remuneration you have paid in the most recent year of the policy period up to the cancellation. We will adjust the premium as described above and refund any unearned premium.

Policy Schedule

1. Name of the insured, the policy period for the policy, the premium to be paid and payment schedule.
2. If an adjustable premium policy, the agreed adjustment method (condition 8 and 9 of the policy does not apply)

3. Details of another entity that the insurer confirmed acceptance of an extension of the policy by endorsing the Schedule
4. Any agreement to pay damages above the \$50 million cap
5. Any agreement to cover overseas workers beyond 24 months
6. Details of any NDIS or domestic arrangements (if covered)



Remuneration Guidelines

1 July 2024

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Introduction

Employers are required to provide a declaration of remuneration to their insurer when effecting or renewing a workers compensation insurance policy.

A declaration of 'estimated' remuneration payable to workers is made for the relevant forthcoming period for new or renewed policies (usually annually). A declaration of 'actual' remuneration must also be provided at the end of a period of insurance.

These guidelines provide further details on the various payments to workers that are included or excluded from remuneration for the purpose of making a declaration to insurers when effecting or renewing policies.

These guidelines are structured as follows:

- Section 1: provides a **quick guide** to the various allowances and leave payments included as remuneration.
- Section 2: provides **detailed information** on remuneration inclusions and exclusions.

These guidelines were developed by WorkCover WA in collaboration with representatives of the Insurance Council of Australia (WA), the Self-Insurer's Association of Western Australia and the National Insurance Brokers Association (WA).

SECTION 1

A Quick Guide to Remuneration Inclusions and Exclusions

Section 1: Quick Guide to Remuneration Inclusions and Exclusions

General Information

Unless specified otherwise in these guidelines, remuneration **includes**:

- Wages
- Salaries
- Commissions
- Bonuses
- Overtime
- Allowances
- Superannuation contributions (except those made by force of law)
- The gross value of fringe benefits (exemptions under tax legislation may apply for charities and not-for-profit organisations)
- Payments in lieu of leave entitlements
- All other cash or non-cash benefits paid to, or in relation to a worker (including working directors declared as such to the insurer) or to contractors before the deduction of income tax.

Remuneration **does not include**:

- Termination payments (excluding accrued leave entitlements)
- Retirement pay
- Retrenchment pay in lieu of notice
- Pensions
- 'Golden handshakes'
- Weekly workers compensation payments.

Quick Guide

The following types of payments are **included** as remuneration. However, certain exceptions may apply. Please refer to Section 2 for further details.

Back pay	Insurances
Board and lodging	Loan and Lease payments
Bonuses and incentive schemes	Payments to contractors
Car parking	Payments in lieu of leave entitlements
Commission	Piece work payments
Company Car (private use)	Penalty rates and overtime payments
Club or association subscriptions	Profit sharing schemes
Debt forgiveness	Public and annual holiday payments (+ loadings)
Dividends	Salary
Dry cleaning	Salary package/sacrifice
Employee share schemes	Staff discounts and benefits
Fares and travelling time	Superannuation (except by force of law)
Fringe benefits	Tips and gratuities
Height money	Working directors – fees and payments
Housing	

The following types of payments are usually **excluded** as remuneration.

Benefits paid by superannuation funds	Redundancy payments
Early retirement benefits	Royalties
Ex-gratia payments	Severance payments
Gifts	Superannuation contributions required by law
Honorariums	Termination payments (excluding accrued leave entitlements)
Payments in lieu of notice	Workers compensation payments
Payroll tax	

The following types of **allowances** are **included** as remuneration:

Accommodation allowance	Motor vehicle allowance
Call out or call back allowance	Overtime allowance
Car allowance	Qualifications allowance
Clothing allowance / expenses	Remote allowance
Construction allowance	Relocation allowance
Dirt money	Rental allowance
Disability allowance	Representation allowance
Entertainment allowance	Shift allowance
First aid allowance	Site or height allowance
Footwear allowance	Skill allowance
Higher duties allowance	Stand by or on call allowance
Industry allowance	Study allowance
Instructor's allowance	Telephone allowance
Laundry allowance	Tool allowance
Living away from home allowance	Travel allowance
Locality allowance	Uniform allowance
Meal allowance	

The following types of **leave** are **included** as remuneration.

Adoption	Lump sum payments in lieu of holiday, sick leave etc.
Annual	Military service
Bereavement	Parental (Federal scheme excepted)
Carers	Public Holidays
Jury Duty	Sick
Leave Loadings	Study
Long service	

Please refer to Section 2 for further details.

SECTION 2

Detailed Guide to Remuneration Inclusions and Exclusions

Section 2: Detailed Guide to Remuneration Inclusions and Exclusions

Back Pay

Any payment in arrears, which is made to workers or ex-workers for work previously carried out. This includes retrospective payments due as a result of award rate increases or natural wage increases.

Board and Lodging

Where the remuneration of a worker consists of wages with board or board and lodging, the wages or the earnings of the worker shall be deemed to be the amount of the wages with the addition of the value of such board or lodging.

Temporary accommodation associated with relocation of employees is not included.

Bonuses and Incentive Schemes

Gratuities or rewards paid or provided by the employer over and above a fixed salary or wage are included. This includes non-business related travel, such as the cost of fares, accommodation, meals and incidentals paid by the employer for the benefit of a worker.

Excludes payments as rewards or prizes provided by any organisation such as a distributor or trade association (e.g. sales targets met, apprenticeship awards) paid by but not originating from the employer and travel undertaken by a worker relating to the employer's trade or business (e.g. conference or trade fair).

Payments or awards relating to company incentive schemes are counted as remuneration.

Car Parking

The value of car parking, if a fringe benefit, is included as remuneration.

Club or Association Subscriptions

Amounts paid to or on behalf of a worker, for membership of any club or association are included (as they are fringe benefits).

Any club subscription where it can be reasonably demonstrated that the payment is a business-related expense or where the worker's membership is in the interests of the employer's trade or business is excluded.

Commission

Payments, usually to sales or marketing personnel, made in addition to any salary retainer, for units sold or sales targets achieved are included. Includes bonuses or 'spotter's fees' paid to non-marketing employees.

Company Car (private use)

If an employer provides a worker with a car (including a worker's private use of a car or through any type of leasing arrangements for private use), the benefit is counted as remuneration.

Contractors

The labour component of payments to contractors which meet the definition of 'worker' are declarable (s. 12(2)(b) or (c)).

Insurers will ordinarily require full details of each payment made to the contractor, for example: labour only; labour and materials; labour materials and plant; or labour and plant. Each insurer will specify the details they require on their wage declaration forms.

For further information on the elements of remuneration that need to be declared, please contact your insurer or broker.

Please note records of payments to all contractors, including the dates of payment and the amounts should be accurately maintained and available for inspection by insurers upon request.

Debt Forgiveness

Included: Where the employer waives or forgives a worker's debt and that benefit is subject to FBT, e.g. if an employer who has sold goods to a worker later tells the worker that they are not required to pay the amount invoiced to them.

Not included: A debt owed by a worker that is written off as a genuine bad debt.

Dividends

See 'Profit-sharing schemes'.

Dry Cleaning

Payments made by the employer to the workers to cover cleaning of uniforms or other clothing are included. Payments made as a reimbursement to the worker for specific expenditure are excluded.

Early Retirement Benefits

Not included. See Termination Payments.

Employee share schemes

Employee share schemes that form part of an employee's salary package (e.g. options, shares and dividends) are included as remuneration.

Ex-Gratia Payments

Ex-gratia payments are not included as remuneration.

Fares and Travelling Time

Included if subject to fringe benefits tax. Any payments to workers that directly reimburse work-related travel costs (e.g. where the costs relate to duties performed away from their usual place of work) that are not subject to fringe benefits tax and are not identified on the worker's group certificate, are not included as remuneration.

If the employer pays the travel expense for another reason (e.g. as a form of additional remuneration or bonus for 'services' rendered under a contract of employment) then the payment is included as remuneration.

Fringe Benefits

Fringe benefits are items paid by an employer on behalf of or for the benefit of employees or their families and include motor vehicles, loan benefits, debt waivers, housing, expense payments, school fees, car parking, payment of health benefits etc.

Generally, if a non-cash component of a worker's wages is considered taxable under the *Fringe Benefits Tax Assessment Act 1986* then, for the purpose of making a declaration of remuneration, it is counted as remuneration.

For any fringe benefit, the amount that is to be included as remuneration is the value of the benefits calculated using the 'taxable value of fringe benefits' ending 31 March in the particular premium policy year, as specified in the *Fringe Benefits Tax Assessment Act 1986*. It is the actual value of the benefit provided (as determined by the Fringe Benefits Tax Assessment Act 1986) i.e. **the grossed-up amount**.

For example, for a benefit valued at \$2,000 then the employer would declare the grossed-up taxable amount which is \$2,000 multiplied by the relevant FBT gross-up formula amount (available from the Australian Tax Office website).

When a policy is cancelled mid-term the benefit declared should be calculated on a pro rata basis having regard to the period elapsed. When a business ceases to operate the employer should declare the value of the benefit up to the date of ceasing the business as per the employer's FBT return.

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

Non-profit organisations, public benevolent institutions and charities should declare worker benefits that are not subject to fringe benefits tax at the **net value**.

Once the worker benefits exceed the Australian Tax Office fringe benefit threshold, the employer must declare the benefit at the grossed-up value.

Gifts

Gifts are not included as remuneration.

Health Insurance

An amount paid by the employer to a health insurance fund for the benefit of workers is included as remuneration. This includes any 'top up' payments by the employer to cover the difference between the amount billed by a medical provider and that paid by a health insurance fund.

The gross amount of premiums paid by the employer is included as remuneration. The proceeds of an insurance claim are excluded.

Height Money

Height money is counted as remuneration.

Honorariums

Honorariums to volunteers or non-workers are not counted as remuneration.

Housing (incl. housing loans)

In general, housing payments, including company housing, free housing and housing loans are counted as remuneration. For example:

- The current market rental value of a company house (less any amount the worker pays for the right to occupy the premises)

- The amount of temporary accommodation (associated with relocation) that is assessable for fringe benefits tax
- The taxable value of a housing loan that is offered to a particular worker as part of their salary package and is subject to fringe benefit tax.

Accommodation provided to an employee in a remote area may be exempt.

Insurances (Life, Health, Personal Accident, Salary Continuance etc.)

Included:

- Any premium or lump sum paid on behalf of a worker to an insurance company for a policy for an employee.
- Premiums paid on any investment-type policy such as an Insurance Bond or Capital Guaranteed Investment Bond
- Purchase by the employer of an annuity on behalf of the worker

Excluded:

- The proceeds of any insurance policy.
- Purchases paid on a worker's policy where the company is the ultimate beneficiary.

Jury Duty/Service Leave

An employer is required by law to continue to pay their workers their usual wage while they are on leave attending jury duty. These payments are to be declared as remuneration.

Lease Payments

Payment of lease/rent (in whatever form or name) for the provision of premises, equipment etc to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as remuneration. Otherwise payment of rent to working directors/working beneficiaries/workers is counted as remuneration.

Loan Payments

Repayment of loans to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as remuneration. Otherwise payment of loan amounts to working directors/working beneficiaries/workers is counted as remuneration.

Lump Sum Payments of Accrued Entitlements

The lump sum payment of accrued entitlements such as Annual Leave, Sick Leave or Long Service Leave are to be counted as remuneration. These payments are often made upon termination of employment.

Operating car leases

Included where the vehicle is regarded as a fringe benefit.

Over Award Payment

A payment that relates to an amount paid, which is above the basic rate set down by an industrial award applicable to that worker is included as remuneration.

Overtime Payments

Overtime payments are counted as remuneration.

Motor Vehicle Allowance

Motor Vehicle Allowances are included as remuneration. The amount is determined by multiplying the number of business kilometres by the applicable ATO cents per kilometre rate.

Novated Leases

Included if subject to fringe benefit tax.

Payments in Lieu of Notice

Payments in lieu of notice are not counted as remuneration.

Piece Work Payments

Productivity-based payments made to a worker at an agreed rate per item produced, assembled or fabricated by that worker are counted as remuneration.

Payroll Tax

Payroll tax is not counted as remuneration.

Penalty Rates

Penalty rates are counted as remuneration.

Profit Sharing Schemes

A profit-sharing scheme describes an arrangement whereby the people who work for a business receive payments as a direct share of profits. If the payments made under this scheme are connected to the performance of work, (i.e. are compensatory or remuneration in nature in return for employment services rendered), those payments are to be declared as remuneration. This could include dividends, trust distributions and bonus payments, depending on the circumstances.

Public and Annual Holiday Payments (Including Loadings)

Public and annual holiday payments (including loadings) are counted as remuneration.

Redundancy Payments

See termination payments.

Representation Allowance

An amount paid to cover time and expense which has been or may be incurred by the worker in the capacity of having to represent, deputise or act as proxy for the employer in any conference, meeting, negotiation or business-related discussion for that employer is counted as remuneration.

Royalties

Royalty payments are not counted as remuneration.

Salary

Salary is counted as remuneration.

Salary Continuance

See 'Insurances'.

Salary Package/Sacrifice

Generally, any wages, salary and the value of fringe benefits and other consideration in money or money's worth the employer provides to workers as part of a 'salary package' or 'salary sacrifice arrangement', are counted as remuneration.

In the case of fringe benefits, the amount counted is the taxable value of the benefits according to the *Fringe Benefits Tax Assessment Act 1986*.

If the employer contributes to the worker's superannuation fund or pays any amounts of fringe benefits and those contributions or payments are debited to the worker's salary package, then they are counted as remuneration.

Severance payments

See 'Termination Payments'.

Staff Discounts and Benefits

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

See 'Fringe Benefits.'

Superannuation payments

Included:

- Employer superannuation contributions which are made by way of salary sacrifice from a worker's salary package.
- Workers superannuation contributions only if salary-sacrificed (these contributions form part of a worker's gross wages and are generally deducted from these wages. The gross wages figure should be declared in this situation).
- In addition, if the employer makes contributions to a worker's superannuation scheme or fund but does not pay the worker any other wages for the work the worker performed, the contribution is counted as remuneration.

Not included:

- Employer superannuation contributions required by law, e.g. *Superannuation Guarantee (Administration) Act 1992 (Commonwealth)*.
- Superannuation benefits paid to workers from superannuation funds.

Termination Payments

When a worker's employment is terminated, made redundant, or the worker retires they may receive various payments. Some types of payments are guaranteed entitlements under industrial awards and agreements and underpinned by legal obligations. For example, accrued leave entitlements. These Guidelines require all legally enforceable accrued entitlements whether paid on termination or not to be declared as remuneration (but they are not called 'termination' payments).

The term ‘termination payments’ as used in these guidelines refers to redundancy, severance, retrenchment, ex gratia, and early retirement payments or any payments made in lieu of notice on termination that are voluntary. (that are voluntary not mandatory, legally enforceable payments). Termination payments are not counted as remuneration.

Tips and Gratuities

Tips and gratuities that employers pass on to their workers and are included on the worker’s payment summary are counted as remuneration.

Trust Distributions

See ‘Profit Sharing Schemes’.

Workers Compensation Payments

Any workers compensation benefits an employer pays to a worker are not counted as remuneration.

Payments by an employer to an injured worker over and above the workers compensation benefits paid to workers by the workers compensation insurer or reimbursement of workers compensation benefits by the workers compensation insurer to the employer are counted as remuneration.

Working Directors Fees and Payments

Remuneration of a working director includes fees, wages, salary, allowances, fringe benefits, trust distributions etc. that are paid in return for manual labour or service.

Coverage

In WA it is optional to cover working directors for workers compensation.

Working directors are only covered by the workers compensation scheme if each director is named on the insurance policy and the remuneration of each director is declared to insurers at policy inception and renewal.

To be covered for workers compensation a working director must:

- be a director under the *Corporations Act 2001*
- undertake work for the company and receive remuneration as a director that are in substance for personal manual labour or services
- be named on the workers compensation policy
- declare estimated remuneration at inception of the policy
- declare actual remuneration at the end of each policy period (renewal)

Definition

To be considered a ‘working director’, a company director must work in the business and do more than undertake director duties. A working director is a person:

- who executes work for or on behalf of the company, and
- whose remuneration as a director of the company, by whatever means, are in substance for their personal labour or services

Exclusions

The following are excluded from coverage as a 'working director':

- Non-working directors
- Sole traders and partnerships
- Unincorporated business owners

Declaring remuneration

A statement of each working director's remuneration is used by the insurer to determine an appropriate insurance premium and calculate income compensation payments for a working director with an incapacity for work.

The following steps must be taken by the working director's company:

1. The company applies to one of the approved insurers and names **each** working director to be covered by the policy.
2. A statement is provided to the insurer specifying each working director's **estimated** remuneration payable over the insurance policy period.
3. At the end of the policy period a statement is provided to the insurer specifying each working director's **actual** remuneration as a director paid over the previous insurance policy period.

Calculating weekly compensation for working directors based on remuneration declarations – examples:

The following examples illustrate how income compensation is calculated for working directors in different circumstances.

Scenario 1	Company statement of estimated earnings of working director is \$80,000. At the end of the policy period the company declares the amount of the working director's earnings is \$100,000. Three months after the last statement of actual earnings the working director is incapacitated for work. Income compensation is based on the annual amount of \$100,000 last declared as the actual earnings of the working director.
Scenario 2	Company provides statement of estimated or actual earnings to insurer with nil remuneration declared for working director. No income compensation is payable as the company has declared the working director receives no earnings.
Scenario 3	Working director working for company less than one year. Statement of working director's estimated earnings of \$80,000 provided to insurer but no statement of actual earnings. At time of injury no remuneration received. Income compensation based on the estimated earnings of \$80,000 p/a declared by the company to the insurer at beginning of policy period.
Scenario 4	Working director working for company less than one year. Statement of working director's estimated earnings of \$80,000 provided to insurer but no statement of actual earnings. At time of injury working director's weekly earnings averaged \$1,000 p/w over 3-month period. Income compensation based on average earnings of \$1,000 pw.