

Workers compensation market practice and premiums guidelines

For premium filings on or after
1 March 2017

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State Insurance
Regulatory Authority

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1. Commencement

These *Workers compensation market practice and premium guidelines* (Guidelines) commence on 1 March 2017 and will apply until rescinded or replaced.

2. Definitions

- (a) These Guidelines adopt the definitions provided in the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Regulation 2016* (the Regulations).
- (b) The terms used in these Guidelines have the following meanings:

Term	Definition
1987 Act	<i>Workers Compensation Act 1987.</i>
1998 Act	<i>Workplace Injury Management and Workers Compensation Act 1998.</i>
Authority	State Insurance Regulatory Authority (SIRA) constituted under the <i>State Insurance and Care Governance Act 2015</i> .
Basic tariff premium	<p>The basic tariff premium for an employer is to be calculated by multiplying the wages payable to workers in respect of the period of insurance by the relevant rate as defined by the insurers against the WIC codes.</p> <p>Where an employer is engaged in more than one business activity and pays wages to workers in more than one class, the proportion of the wages for each class is to be multiplied by the rate applied against each relevant WIC code.</p> <p>If the policy concerned relates to per capita rates in respect of some or all workers, the relevant numbers by which those rates are to be multiplied (for example the number of boxing matches or taxi licence plate) should be substituted for wages in respect of those workers.</p>
Break-even premium rate	The expected cost for the portfolio divided by wages for the premium renewal year where expected costs include estimated incurred claims costs, investment earnings and expenses, and levies, but exclude profit margin.
Cost of claims	The claims costs included within the premium formula as per each insurer's premium filing.
Cohort	A sub-set of a licenced insurer's portfolio that exhibits claims experience that is statistically different from other sub-sets. Examples include size (small and large employers) and industry (as defined by the WIC system).

Term	Definition
Employer premium rate	The actual premium rate charged for a particular employer. For experience rated employers, the employer premium rate is weighted between the tariff premium rate and their experience premium rate plus any other loadings or adjustments made to the premium.
Licensed insurer	An insurer who holds a current licence granted under Division 3 of Part 7 of the 1987 Act.
Nominal Insurer	The workers compensation Nominal Insurer established by section 154A of the 1987 Act.
Per capita rate	The rate specified for a WIC code that is represented in a way other than a percentage.
Policy or policy of insurance	A policy of insurance as detailed in the 1987 Act.
Portfolio	All workers compensation policies expected to be written in the premium renewal by a licenced insurer.
Premium filing	A report of the premiums that the insurer proposes to charge to each employer which includes the formula, parameters and industry premium.
Rating structure	A licenced insurer's methodology for calculating an employer's workers compensation premium. It will normally consist of formulae, parameters, tariff rates, loadings and discounts.
Regulations	The Regulations under the 1987 and 1998 Acts respectively.
Specialised insurer	An insurer whose licence is endorsed with a specialised insurer endorsement.
Tariff premium rate	The rate defined for a particular NSW WIC code which reflects the underlying claims cost of a particular industry.
Target premium rate	The total premium expected to be collected for an insurer's portfolio (including all loadings, discounts and adjustments) divided by total portfolio wages for the premium renewal year.
Ultimate premium rate	The amount as a percentage of wages that is expected to be collected when factors such as capping, safety incentives and other external factors are taken into consideration.
Wages	Wages as defined in section 174 (9) of the 1987 Act, but does not include a motor vehicle allowance or accommodation allowance to the extent that the allowance is required to be excluded from wages by Annexure D of these Guidelines.

Term	Definition
WIC codes	The codes specified in the NSW Workers Compensation Industry Classification (WIC) System (see Annexure A) issued by SIRA as part of the <i>Workers compensation market practice and premiums guidelines</i> .

3. Guideline-making powers

3.1 These Guidelines are made under section 168 of the 1987 Act.

 Explanatory note:

Section 168 (1) of the 1987 Act allows the Authority to issue guidelines with respect to policies of insurance (the Workers compensation market practice and premiums guidelines).

The Guidelines specify the minimum requirements for policies of insurance as per the 1987 Act and the Regulations and set out how insurers are to present premium filings to the Authority and how the Authority will assess those filings.

4. Scope of Guidelines

4.1 These Guidelines form part of a suite of regulatory instruments available to the Authority when regulating insurer financial and prudential arrangements. As per the 1987 Act and the Regulations, the Guidelines specify:

- the minimum requirements for policies of insurance
- how insurers are to present premium filings to the Authority, and
- how the Authority will assess those filings.

4.2 These Guidelines apply to all ‘licensed insurers’ as per the 1987 Act, including the Nominal Insurer and specialised insurers.

To clarify, the following entities are exempt from the requirements outlined in these Guidelines:

- self-insurers
- Self-Insurance Corporation (SICorp) (including any Government employer covered by the Government’s managed fund scheme under section 211B of the 1987 Act), and
- Coal Mines Insurance (the workers compensation company (within the meaning of the *Coal Industry Act 2001*)).

4.3 These Guidelines apply to premium filings for policies commencing on or from 4:00pm, 30 June 2017 until the Guidelines are rescinded or replaced.

- 4.4** Section 3 of the 1998 Act states that the purpose of the workers compensation legislation is to establish a workplace injury management and workers compensation system with the following objectives:
- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury
 - (b) to provide:
 - o prompt treatment of injuries
 - o effective and proactive management of injuries, and
 - o necessary medical and vocational rehabilitation following injuries.
 - (c) in order to assist injured workers and to promote their return to work as soon as possible
 - (d) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses
 - (e) to be fair, affordable, and financially viable
 - (f) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work, and
 - (g) to deliver the above objectives efficiently and effectively.
- 4.5** These Guidelines are aimed at enabling the achievement of these objectives by ensuring insurance policies and premiums are fair, affordable and commensurate with each employer's risks.
- 4.6** The Authority will apply these Guidelines in conjunction with relevant legislation, NSW Government policy and other policies and guidelines issued by the Authority as appropriate in the public interest.

5. Premium principles

Licensed insurer premium filings are required to demonstrate the following principles:

5.1 Principle 1: Premiums are fair and reflective of risk

Employer premiums should be fair and reflective of risk as indicated by the employer's industry, size and previous claims experience and risk management.

In general, fairness can be assessed relative to other similar cohorts of employers. The intention is that all employers engaged in the same or similar industry or business activities should have premium rates that are the same or similar unless influenced by the individual employer's previous claims experience and its risk management and return to work practices. Insurers should not deliberately introduce cross subsidies between cohorts of employers.

Where an employer's previous claims experience is taken into account, the fairness of its premium will be assessed under Principles 2 and 3.

The insurer will need to provide justification that its proposed target average premium rate for a particular cohort fairly reflects the expected claims costs, expenses and suitable profit margin for that cohort.

5.2 Principle 2: Balance between 'user pays' and 'insurance principles'

Employer premiums should strike a reasonable balance between 'user pays' (through experience rating) and 'insurance principles' (through the pooling of the experience of all employers).

Large employers generally have more influence over their claims experience through risk management and return to work management than small employers. While they need a level of insurance protection through their workers compensation cover (especially for very large claims), they can generally operate according to premiums that are based on their claims experience, ie premiums largely determined on a 'user pays' basis.

For small employers, their primary requirement is insurance cover which provides certainty of protection against the costs of workers compensation claims for a fixed premium. Insurers therefore need to pool the premiums for smaller employers so as to spread their claims costs across the premium pool. That is the meaning of 'insurance principles' for the purpose of Principle 2.

When dealing with small employers, insurers are required to apply to industry-based rates in accordance with Principle 1, as well as very limited premium adjustments for claims experience and risk management.

As employer size increases, they can take into account the employer's own claims experience and risk management practices according to their size, whereby the largest employers can be rated almost entirely on their claims experience, return to work management and risk management practices.

5.3 Principle 3: Premiums should not be unreasonably volatile or excessive

This principle builds on the objective that the workers compensation system be fair, affordable, and financially viable.

At a system level, employer premiums should not be excessive. In general, they should be reasonably stable from year to year, fairly reflecting individual employer risk, but at the same time not endangering the financial viability of the system.

Affordability in this context relates to the premium burden on employers in general, and the subsequent impact on the NSW economy.

Protecting employers from excessive and unreasonably volatile premiums is particularly important for small employers. The claims experience of a small employer can be volatile from period to period and can be unduly affected by one large claim.

A small employer's individual claims experience should not have an unreasonable impact on their premium. From this perspective, small employer premium stability is consistent with the affordability objective in the legislation and the insurance principles articulated in Principle 2.

Large employers have a greater capacity to influence their own claims experience. The fairness of the system is more clearly served if the premiums of larger employers are more directly reflective of their claims experience.

To the extent that financial viability is not unduly impacted (see Principle 5), premium stability includes consideration of the staged implementation of changes to claims experience, premium loadings, discounts and investment earning rates. This will enable employers to adjust injury risk management and return to work practices to mitigate against expected future premium expenses.

5.4 Principle 4: Incentives for risk management and good claims outcomes

Individual premiums should provide incentives for employers to undertake effective risk management aimed at improving health and safety in the workplace and work opportunities for injured employees.

Employers can have their premiums discounted or loaded on the basis of their previous claims experience and the effectiveness of their return to work and risk management practices. Such discounts and loadings, which must also conform to Principles 1, 2 and 3, should be designed (as much as possible) to generate incentives for the employer in the form of premium rebates or reducing future premiums for good or improving performance.

At the same time, perverse incentives or incentives that might compromise the objectives of the scheme in relation to the effective treatment and rehabilitation of injured workers must be avoided.

5.5 Principle 5: The premium basis needs to be consistent with the insurer's capital requirements

Insurers are required to have a capital management plan that recognises the substantial financial and insurance risks inherent in workers compensation portfolios. An insurer's premium basis needs to be consistent with its capital management plan and current capital position.

For the Nominal Insurer, the premium rates as a whole are to be set so as to achieve (as far as can be estimated) an overall target premium pool for the year. The target premium pool is to be linked to the Nominal Insurer's funding plan which will take account of its overall capital management plan, current capital position and target capital position over three forward years.

For each Specialised Insurer, the premium rates as a whole are to be subject to an annual total premium revenue plan that accords with the insurer's capital management plan.

For those insurers authorised by the Australian Prudential Regulation Authority (APRA), the insurer's capital management plan is to be presented to the Authority and is required to be consistent with capital management plans that the insurer has submitted to APRA.

For all licensed insurers, the filing is required to justify the difference between:

- the target premium rate
- the breakeven premium rate (including cost of claims, expected investment earnings and expenses), and
- show how this difference impacts on the insurer's projected capital position.

6. Premium requirements for licensed insurers

- 6.1 All policies of insurance must comply with Part 7 (Insurance) of the 1987 Act and the Regulations.
- 6.2 **Exemption limit**

Section 155AA (8) of the 1987 Act

The exemption limit for the 2017/2018 financial year is fixed at \$0 for the following employers:

- (a) an employer who carries on a business that is covered by Annexure A classes 612310, 612315, 612320, 612322, 612324, 612326, 612330, 931120, 931130, 931930, 931940 or 931950 (being classes that refer to a per capita rate), regardless of whether the employer carries on any other business
- (b) an employer who carries on a business in the thoroughbred racing industry and who is required by the Rules of Racing (within the meaning of the *Thoroughbred Racing Act 1996*) to hold a policy of insurance with Racing NSW, regardless of whether the employer carries on any other business.

Note: Fixing the exemption limit for the specified employers at \$0 means that those employers will not be exempt employers within the meaning of section 155AA (exempt employers not required to obtain policy of insurance) of the 1987 Act.

6.3 Recovery of excess from employer

Section 160 of 1987 Act

The following prescribed excess amount is specified:

- (a) \$0 - if an employer notifies the relevant licensed insurer of an injury that led to the weekly compensation claim within five days of becoming aware of it
- (b) in all other cases—the lesser of the following:
 - i. the amount that is the weekly payment of compensation to which the worker is entitled as determined by section 36 of the 1987 Act
 - ii. the amount as per Annexure B for the applicable policy year.

Note: Under section 160 (2) of the 1987 Act, an employer is required to repay the prescribed excess amount to the insurer under an insurance policy in respect of each weekly compensation claim that the insurer has paid under the policy. However, if the amount that the insurer has paid in respect of any such claim is less than the prescribed excess amount, the amount the employer must repay is that lesser paid amount.

6.4 Late payment prescribed rates

Section 172 (5) of 1987 Act

The prescribed rate is as defined in Annexure C and is the rate applied per month and compounded monthly.

6.5 Mine safety contribution

Mine and Petroleum Site Safety (Cost Recovery) Act 2005

Licensed insurers are required to comply with the provisions of the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* by making the determined contribution to the Mine Safety Fund and advise in the premium filing the rate payable by employers whose wages or a part of their wages are attributable to WIC codes 120000 to 152000.

6.6 Dust diseases contribution

Licensed insurers are required to comply with the Notice published by the Authority and issued pursuant to the *Workers Compensation (Dust Diseases) Act 1942*, which determines the contributions for insurers under section 6 of that Act.

6.7 Employer definitions

Division 2, section 138 of the Regulations

(a) For the purposes of this Guideline:

Experience-rated employer means an employer whose basic tariff premium for an insurance policy at the time the insurer demands a premium for the policy:

- i. exceeds \$30,000 (where the period of insurance to which the premium relates is 12 months), or
- ii. would exceed \$30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

Small employer means an employer whose basic tariff premium for an insurance policy at the time the insurer demands a premium for the policy:

- i. does not exceed \$30,000 (where the period of insurance to which the premium relates is 12 months), or
- ii. would not exceed \$30,000 (where the period of insurance to which the premium relates is not 12 months) if that premium was calculated using a period of insurance of 12 months.

(b) If an employer is a member of a group, a reference to the basic tariff premium of the employer or to total wages payable by the employer to workers (however expressed), is taken to be a reference to the sum of the basic tariff premiums of all members of the group or to total wages payable to workers by all members of the group, respectively.

6.8 Wages and motor vehicle allowances

Section 174 (9) of the 1987 Act

The definitions and calculations regarding the extent to which motor vehicle and accommodation allowances are to be excluded from wages as defined in Annexure D.

6.9 Treatment of prior businesses

(a) For the purpose of these Guidelines, a person is the **predecessor** of an employer if there is:

- i. **an acquisition of the predecessor's business** - the employer has acquired or otherwise come into the possession of the business of the person, or
- ii. **a transfer of all or the majority of the predecessor's workforce** - the employer has, during any policy period, employed workers who at any time constituted all or a majority of the workers employed,

during any policy period, and those workers have carried out activities or performed services for the employer that were the same or similar to activities carried out or services performed by those workers for the person.

- (b) The claims and basic tariff premium history of an employer's predecessor must be used in the calculation of the employer's workers compensation insurance premium.
- (c) Sub-clause 6.9 (a) (i) applies when the business acquired is the whole or main part of the business of the person, or is the whole or main part of a separate and distinct business of the person, and whether or not the business acquired is carried on at the same location.
- (d) Sub-clause 6.9 (a) (ii) applies whether or not the activities carried out or services performed for the employer were carried out or performed at the same location as those carried out or performed for the person.
- (e) In this clause, **business** has the same meaning as in Division 2B of Part 7 of the 1987 Act.

6.10 Apprentice discount

Each insurer must provide details of an apprentice incentive scheme available to employers in the premium filing. As a minimum, the apprentice incentive discount must equal the basic tariff premium payable on remuneration payments to apprentices by the employer.

6.11 Retro-paid loss policies – calculation of required deposit

 Under section 172A of the 1987 Act

The required deposit for an employer is to be:

- (a) an amount or calculation method proposed by the Nominal Insurer and provided in a premium filing
- (b) approved by the Authority.

6.12 Wage audit program requirement

Each licensed insurer must maintain a wage audit program to ensure that employers within their portfolio of insurance are compliant with the relevant NSW workers compensation legislation, guidelines and rulings as issued and maintained by the Authority.

6.13 Regulator premium information requirements

Each licensed insurer must provide the Authority with employer and policy information that is compliant with the requirements of the *Policy technical manual* issued by the Authority or as otherwise specified by the Authority.

6.14 Premium information for employers

- 6.14.1 Licensed insurers are required to make available to an employer, or their representative, information used in the calculation of the premiums for that employer.

- 6.14.2 Information made available to employers must include all inputs into the calculation such as, but is not limited to:
- (a) claims costs information
 - (b) remuneration used
 - (c) industry classification
 - (d) industry classification rate
 - (e) any penalties, rebates or discounts applied (including capping provisions).

6.15 Employer premium dispute process

- 6.15.1 Licensed insurers are required to have a process in place where an employer may appeal aspects of their premium determination. The dispute process must include as a minimum:
- (a) contact details for appeals and reviews within the licensed insurer
 - (b) timeframes for lodging and resolving disputes
 - (c) actions required by an employer and the licensed insurer in the dispute process
 - (d) employers may lodge a complaint with the Authority if a resolution is not reached
 - (e) insurers must acknowledge the request for review within five working days and complete and finalise the review a timely manner
 - (f) the insurer must provide the contact details of the Authority to the employer so that they may seek a further review where they are not satisfied with the outcome of the insurer's determination
- 6.15.2 The Authority will investigate any complaint to determine if a premium has been written that is not compliant with the Guidelines.
- 6.15.3 The Authority may audit a licensed insurer under section 202A of the 1987 Act regarding compliance with the Guidelines where it is considered appropriate.

6.16 Premium instalments

- 6.16.1 As per Part 18, Division 6 of the Workers Compensation Regulation 2016 licensed insurers may offer premium payments by instalment plans.
- 6.16.2 Each type of instalment plan must be approved by the Authority in the licensed insurer's premium filing.

7. Premium filing process

7.1 Frequency of submission of premiums

- 7.1.1 A licensed insurer must not write a premium that has not been filed with the Authority.
- 7.1.2 Licensed insurers are to provide their premium filings for the next year beginning 4:00pm, 30 June and ending 31 March each year.
- 7.1.3 If a licensed insurer proposes charging premiums other than the premiums previously filed and not rejected by the Authority within a 12-month policy year, the licensed insurer is required to submit a revised premium filing.
- 7.1.4 A licensed insurer may submit a revised filing to the Authority at any time.

7.2 Premium filing meetings

- 7.2.1 Each licensed insurer is encouraged to meet with the Authority for a pre-filing meeting. The Authority anticipates that licensed insurers could present:
 - (a) proposed significant changes to premium formula from previous filings
 - (b) material differences with the most recent valuation assumptions
 - (c) implementation plans based on the effective date of the premium filing, including systems testing and scheduling.
- 7.2.2 Each licensed insurer is encouraged to meet with the Authority when it submits a premium filing. At this meeting they can present the highlights of the proposed filing, including the context, material changes from the previous filing, and any variations to the proposals indicated at the pre-filing meeting.

7.3 Premium filing in accordance with section 168 of the 1987 Act

- 7.3.1 Each licensed insurer's premium filing is to describe the proposed rating structure and the method by which the licensed insurer will determine the proposed premium rates that are to be applied to employers in each WIC code for which the insurer is licensed to offer workers compensation policies.
- 7.3.2 The premium filing is to be submitted on a prospective basis, with all discounts and adjustments included, as well as the triggers for these discounts.
- 7.3.3 The premium filing for each licensed insurer is to include an explanation and supporting evidence for:
 - (a) their premium calculation formula

- (b) the rating structure including all formulae relating to the calculation of the rates
- (c) detailed methodology of the use of claims costs within the premium calculation including, but not limited to, included and excluded claims cost, claim costs limits, claims reporting periods and, any discounts or exemptions
- (d) the break-even premium rate, the target premium rate and the collection rate for the portfolio, and supporting justification if these rates are different from each other
- (e) the derivation of the break-even premium rate, the target premium rate and the collection rate
- (f) description of how the rating structure is to be applied to individual employers
- (g) the estimated numbers of employers to be insured, and:
 - i. the premiums and wages by WIC code for the current policy renewal year ending 30 June for medium and large employers
 - ii. the premiums and wages by WIC code for the next policy renewal year commencing 30 June for medium and large employers, and
 - iii. the estimated premium discounts and loadings summarised by both employer size and level of discount and loading.
- (h) actuarial support of compliance of the proposed rating structure with the pricing principles, and
- (i) a projection of the insurer's capital position at the end of the fund year and three forward years as a result of writing the business proposed under the new rating structure.
- (j) average past actual and future rates and amounts of:
 - i. acquisition, marketing and policy handling expenses with an explanation and description of the methodology used to allocate expenses.
- (k) actuarial assumptions that demonstrate support of the premium filings.

7.3.4 Each premium filing must include the licensed insurer's assessment of how the rating structure and premiums meet the premium principles as specified in Part 5 of these Guidelines.

7.3.5 Each premium filing must clearly demonstrate how the proposed premium policies of insurance and processes meet the premium requirements of the relevant legislation and regulations as specified in Part 6 of these Guidelines.

7.3.6 Each premium filing must be provided in accordance with Annexure E.

7.4 Assessment and rejection of premium filing in accordance with section 169 of the 1987 Act

- 7.4.1 The Authority will assess a licensed insurer's premium filing (submitted as per Part 7 of these Guidelines) against the following criteria:
- (a) compliance with the premium principles as described in Part 5 of these Guidelines
 - (b) compliance with the premium requirements as described in Part 6 of these Guidelines, and
 - (c) compliance with the requirements described in Part 7.3 of these Guidelines.
- 7.4.2 Failure to demonstrate compliance to a reasonable degree with these Guidelines, and in particular, any of the abovementioned criteria may result in a rejection of the premium filing.
- 7.4.3 The Authority will complete an assessment of a licensed insurer's premium filing within six weeks of receipt and will endeavour to do so within four weeks.
- 7.4.4 The Authority may request additional information or amendments to the premium filing in order to ensure that the criteria of the Guidelines are met. Insurers are required to respond to requests for additional information or amendments promptly.
- 7.4.5 The Authority will advise a licensed insurer in writing once the assessment is complete, advising that the premium filing has not been rejected.
- 7.4.6 Once the Authority confirms that an assessment is complete and the premium filing has not been rejected, a licensed insurer must apply the rates and rating structure from commencement of the premium filing period without discretion.
- 7.4.7 Where a premium is rejected, the Authority will provide written notice of its rejection of a premium and the reasons for the rejection.
- 7.4.8 Where a premium is rejected, the Authority and the licensed insurer will adhere to the process defined in Section 169 of the 1987 Act or as defined in the Regulations.

The Authority will monitor and review compliance with these Guidelines.

8. Annexures

Annexure A - NSW Workers Compensation Classification System

Annexure B - Recovery of excess from employer

Annexure C - Late payment prescribed amount

Annexure D - Motor vehicle and accommodation allowance

Annexure E - Premium filing process

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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