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SPECIAL SUPPLEMENT



New South Wales

Workers Compensation Amendment (Premiums) Regulation 2006

under the

Workers Compensation Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Commerce

Explanatory note

The object of this Regulation is to amend the *Workers Compensation Regulation 2003 (the Principal Regulation)* as a consequence of the enactment of the *Workers Compensation Legislation Amendment Act 2006 (the Amending Act)*.

More specifically, the objects of the Regulation are as follows:

- (a) to omit redundant provisions in respect of a *prescribed excess amount* in relation to the excess that an employer is required to repay an insurer under a policy of insurance in respect of each weekly compensation claim that the insurer has paid under the policy (those amounts are in future to be set out in the relevant insurance premiums order) (**Schedule 1 [1]**),
- (b) to provide that provisions in an insurance premiums order that specify a prescribed excess amount apply to policies of insurance issued or renewed by specialised insurers (**Schedule 1 [3]**),
- (c) to provide, as a transitional matter, for amounts prescribed as prescribed excess amounts in the Principal Regulation in the past to continue to apply in relation to policies of insurance issued or renewed before that omission (proposed clause 250 in **Schedule 1 [4]**),
- (d) to provide that the following employers are excluded from the operation of the new grouping provisions (that is Division 2A of Part 7) in the *Workers Compensation Act 1987 (the Principal Act)* (**Schedule 1 [2]**):
 - (i) an employer who is insured with a specialised insurer,
 - (ii) an employer who is insured where the policy of insurance relates only to domestic workers employed by private households,

Workers Compensation Amendment (Premiums) Regulation 2006

Explanatory note

- (e) to insert a savings provision into the Principal Regulation to provide that sections 175G, 175H and 175J (that are to be inserted into the Principal Act by the Amending Act) do not have effect until 4 pm on 30 June 2006 and that the Principal Act continues to have effect until that time as if those sections had not been inserted into it (**Schedule 1 [4]**).

This Regulation is made under the *Workers Compensation Act 1987*, including sections 160, 175D (3) and 280 (the general regulation-making power).

Workers Compensation Amendment (Premiums) Regulation 2006

Clause 1

Workers Compensation Amendment (Premiums) Regulation 2006

under the

Workers Compensation Act 1987

1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Premiums) Regulation 2006*.

2 Commencement

- (1) This Regulation commences at 4 pm on 30 June 2006, except as provided by subclause (2).
- (2) Schedule 1 [4] commences at the beginning of 30 June 2006.

3 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

Workers Compensation Amendment (Premiums) Regulation 2006

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 51 Excess recoverable from employer: section 160

Omit clause 51 (1), (2) and (2A).

[2] Clause 53A

Insert after clause 53:

53A Employers excluded from grouping provisions: section 175D (3)

The following employers are excluded from the operation of Division 2A (Grouping of employers for insurance purposes) of Part 7 of the Act:

- (a) an employer who is insured with a specialised insurer,
- (b) an employer who is insured where the policy of insurance relates only to private household domestic workers.

[3] Clause 147 Further policies exempt from order—unregulated premiums

Omit clause 147 (2). Insert instead:

- (2) Despite subclause (1), policies issued or renewed by a specialised insurer are not exempt from an insurance premiums order to the extent that the order specifies a prescribed excess amount for the purposes of section 160 of the Act.

[4] Part 23, Division 6

Insert after Division 5:

Division 6 2006 amending Act**248 Definition**

In this Division, *amending Act* means the *Workers Compensation Legislation Amendment Act 2006*.

249 Saving

Until 4 pm on 30 June 2006:

- (a) the Act continues to have effect as if sections 175G, 175H and 175J had not been inserted into the Act by the amending Act, and
- (b) those sections do not have effect.

Workers Compensation Amendment (Premiums) Regulation 2006

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250 Transitional—prescriptions for purposes of excess recoverable from employer

- (1) Clause 51 (1), as in force immediately before the commencement of Schedule 1 [2] to the amending Act, continues to apply to claims that are covered by a policy of insurance that was issued or renewed so as to take effect on or after 4 pm on 31 December 2005 but before 4pm on 30 June 2006.
- (2) Clause 51 (1), as in force immediately before its repeal by the *Workers Compensation Amendment (Premiums Review) Regulation 2005*, continues to apply in relation to policies of insurance that were issued or renewed so as to take effect before 4 pm on 31 December 2005.



New South Wales

Insurance Premiums Order 2006–2007 Amendment Order 2006

under the

Workers Compensation Act 1987

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and on the recommendation of the WorkCover Authority, and in pursuance of sections 160 and 168 of the *Workers Compensation Act 1987*, make the following Order.

Dated, this 28th day of June 2006.

By Her Excellency's Command,

JOHN DELLA BOSCA, M.L.C.,
Minister for Commerce

Explanatory note

The object of this Order is to amend the *Insurance Premiums Order 2006–2007 (the Principal Order)* as a consequence of the enactment of the *Workers Compensation Legislation Amendment Act 2006* and for other purposes.

More specifically, the Order makes amendments:

- (a) to allow the insurance premium of an employer who is a member of a group (within the meaning of the *Workers Compensation Act 1987 (the Act)*) to be adjusted to take account of that fact (**Schedule 1 [3], [6], [8]–[11] and [14]–[16]**), and
- (b) to alter the method of calculation of an employer's insurance premium where a policy of insurance has been cancelled and the employer has not entered into another policy of insurance under the Act because the employer has become a Comcare employer (basically, licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth) (**Schedule 1 [12] and [13]**), and

Insurance Premiums Order 2006–2007 Amendment Order 2006

Explanatory note

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- (c) to specify the prescribed excess amount that an employer is required to repay to the insurer under a policy of insurance to which the Principal Order applies in respect of each weekly compensation claim that the insurer has paid under the policy (**Schedule 1 [4]**), and
 - (d) to provide that the new prescribed excess amount provision referred to in paragraph (c) is to apply to policies of insurance issued or renewed by specialised insurers (**Schedule 1 [7]**), and
 - (e) to include a Mine Safety Fund premium adjustment amount in the calculation of relevant insurance premiums (**Schedule 1 [1], [2], [5] and [17]**), and
 - (f) to revise an incorrect percentage in Table A to the Principal Order.

This Order is made under sections 160 and 168 of the *Workers Compensation Act 1987* and section 10 (5) of the *Mine Safety (Cost Recovery) Act 2005*.

Insurance Premiums Order 2006–2007 Amendment Order 2006

Clause 1

Insurance Premiums Order 2006–2007 Amendment Order 2006

under the

Workers Compensation Act 1987

1 Name of Order

This Order is the *Insurance Premiums Order 2006–2007 Amendment Order 2006*.

2 Commencement

This Order commences at 4 pm on 30 June 2006.

3 Amendment of Insurance Premiums Order 2006–2007

The *Insurance Premiums Order 2006–2007* is amended as set out in Schedule 1.

Insurance Premiums Order 2006–2007 Amendment Order 2006

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Calculation of insurance premium payable by employer

Insert “+ M” after “– I” wherever occurring in the formulae in clause 3 (1) (a) and (b).

[2] Clause 3 (1)

Insert at the end of the subclause:

M is the Mine Safety Fund premium adjustment, if any, for the employer calculated with respect to the period of insurance in accordance with Schedule 11 to this Order.

[3] Clause 3 (3)

Insert after clause 3 (2):

- (3) However, if the employer is a member of a group:
- (a) subclause (2) does not apply, and
 - (b) where the sum of the basic tariff premiums $[T_G]$ for all the members of that group:
 - (i) is less than \$50,000 (or, if the period of insurance is to be less than 12 months, where the sum of basic tariff premiums $[T_G]$ would be less than \$50,000 were that period of insurance to be 12 months), the experience adjusted premium for the employer's policy $[(T \times (1 - S)) + (E \times S)]$ is not to exceed one and a half times the amount of the employer's basic tariff premium $[1.5 \times T]$, and
 - (ii) is or exceeds \$50,000 but is less than \$150,000 (or, if the period of insurance is to be less than 12 months, where the sum of basic tariff premiums $[T_G]$ would be or would exceed \$50,000 but would be less than \$150,000 were that period of insurance to be 12 months), the experience adjusted premium for the employer's policy $[(T \times (1 - S)) + (E \times S)]$ is not to exceed twice the amount of the employer's basic tariff premium $[2 \times T]$, and

Insurance Premiums Order 2006–2007 Amendment Order 2006

Amendments

Schedule 1

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- (iii) is or exceeds \$150,000 but is less than \$300,000 (or, if the period of insurance is to be less than 12 months, where the sum of basic tariff premiums $[T_G]$ would be or would exceed \$150,000 but would be less than \$300,000 were that period of insurance to be 12 months), the experience adjusted premium for the employer's policy $[(T \times (1 - S)) + (E \times S)]$ is not to exceed two and a half times the amount of the employer's basic tariff premium $[2.5 \times T]$.

[4] Clause 3A

Insert after clause 3:

3A Recovery of excess from employer: section 160 of the Act

For the purposes of the definition of *prescribed excess amount* in section 160 (1) of the Act, the following excess amount is specified:

- (a) if the employer concerned notified the relevant insurance scheme agent of the injury that led to the weekly compensation claim of the worker within 5 days of the employer becoming aware of it—\$0,
- (b) in all other cases—the lesser of the following:
 - (i) the amount that is the current weekly wage rate of the worker as determined by section 42 of the Act,
 - (ii) \$1,479.90.

Note. Under section 160 (2) of the Act, an employer is required to repay the *prescribed excess amount* to the insurer under a policy of insurance 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.

[5] Clause 6 Schedules and Tables A and B

Omit “Schedules 1–10”. Insert instead “Schedules 1–11”.

Insurance Premiums Order 2006–2007 Amendment Order 2006

Schedule 1 Amendments

[6] Schedule 1 Interpretation

Insert after clause 2 (2):

- (3) 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.

[7] Schedule 2 Application

Insert at the end of clause 2:

- (2) Despite subclause (1), clause 3A of this Order applies to policies of insurance issued or renewed by a specialised insurer.

[8] Schedule 4 Experience adjustment factor

Insert after clause 1:

1A Employers who are members of a group

- (1) Despite clause 1, if the employer is a member of a group, the experience adjustment factor (“S”) for the employer is as follows:

(a) where:

- (i) the employer has been insured under a policy or policies for the period of 2 years immediately preceding the commencement of the period of insurance for which the premium is to be calculated or has been so insured for a longer period, and
- (ii) during those 2 years, every member of the group that was required by the regulations to supply particulars of claims against the member to the member’s insurer has supplied the insurer with those particulars in accordance with the regulations,

the factor calculated in accordance with the following formula:

$$\frac{0.9T_G}{T_G + 225,000}$$

(b) where:

- (i) the employer is a new employer and has been insured under a policy or policies for a period of less than 12 months immediately preceding the

Insurance Premiums Order 2006–2007 Amendment Order 2006

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-
- commencement of the period of insurance for which the premium is to be calculated, and
- (ii) during that period, every member of the group that was required by the regulations to supply particulars of claims against the member to the member's insurer has supplied the insurer with those particulars in accordance with the regulations,
- the factor is the factor calculated in accordance with the formula in paragraph (a) multiplied by 0.33,
- (c) where:
- (i) the employer is a new employer and has been insured under a policy or policies for a period of 12 months or more but less than 2 years immediately preceding the commencement of the period of insurance for which the premium is to be calculated, and
- (ii) during that period, every member of the group that was required by the regulations to supply particulars of claims against the member to the member's insurer has supplied the insurer with those particulars in accordance with the regulations,
- the factor is the factor calculated in accordance with the formula in paragraph (a) multiplied by 0.66,
- (d) in any other case—0.
- (2) In this clause:
new employer has the same meaning as in clause 1 (1).
 T_G is the sum of the basic tariff premiums for all the members of the group calculated:
- (a) where the period of insurance to which the premium relates is 12 months—in accordance with Schedule 3 to this Order with respect to that period of insurance, or
- (b) where the period of insurance to which the premium relates is not 12 months—in accordance with Schedule 3 to this Order as if the policies to which the premiums relate had a period of insurance of 12 months.
- (3) For the purposes of subclause (1) (a), an employer is taken to have been insured for the period of 2 years referred to in that paragraph even if there has been a break or breaks in insurance within that period.

Insurance Premiums Order 2006–2007 Amendment Order 2006

Schedule 1 Amendments

[9] Schedule 4, clause 2

Insert at the end of clause 2:

- (2) If an employer that is a member of a group was not insured for the period of 2 years referred to in clause 1A (1) (a), because the employer was a self-insurer during the whole or any part of that period, the formula in clause 1A (1) (a) applies as if the employer had been insured under a policy (and supplied particulars) during the whole of that period.

[10] Schedule 4, clause 3

Insert at the end of clause 3:

- (2) The period referred to in clause 1A (1) (a) during which an employer has been insured under a policy or policies and every member of the employer's group supplied particulars of claims includes any period during which a predecessor of the employer has been so insured and supplied particulars.

[11] Schedule 4, clause 5

Insert at the end of the Schedule:

5 Transitional provision—experience adjustment factor for members of group

- (1) The premium payable by an employer who is a member of a group for a policy of insurance issued or renewed after the commencement of this Order (being 4pm on 30 June 2006), being a premium calculated using the new experience adjustment factor, if the policy is issued or renewed:
 - (a) during the first 12 months after that commencement, is not to exceed an amount 25% greater than the premium that would have been calculated using the old experience adjustment factor, and
 - (b) during the second 12 months after that commencement, is not to exceed an amount 50% greater than the premium that would have been calculated using the old experience adjustment factor, and
 - (c) during the third 12 months after that commencement, is not to exceed an amount 75% greater than the premium that would have been calculated using the old experience adjustment factor.

Insurance Premiums Order 2006–2007 Amendment Order 2006

Amendments

Schedule 1

(2) In this clause:

new experience adjustment factor, in relation to an employer, means the experience adjustment factor determined in accordance with clause 1A of this Schedule.

old experience adjustment factor, in relation to an employer, means the experience adjustment factor determined in accordance with clause 1 of this Schedule.

[12] Schedule 5 Experience premium

Omit clause 1 (1) (a) and (b). Insert instead:

(a) for the purpose of calculating the initial premium payable before the expiration of the period of insurance for which the premium is to be calculated, in accordance with the following formula:

$$E = T \times \frac{\text{Initial ECCR}}{\text{ICCR}_1}$$

(b) after the period of insurance for which the premium is to be calculated has expired (being a period that is not less than 12 months), in accordance with the following formula:

$$E = T \times \frac{\text{Hindsight ECCR}}{\text{ICCR}_2}$$

(c) after the period of insurance for which the premium is to be calculated has expired (being a period that is less than 12 months) or after the policy of insurance has been cancelled (where the period of insurance covered by that policy until that cancellation was less than 12 months):

(i) if the employer has not entered into another policy of insurance under the Act because the employer has become a Comcare employer, in accordance with the following formula:

$$E = T \times \frac{\text{Hindsight ECCR}}{\text{ICCR}_2}$$

(ii) in any other case, in accordance with the following formula:

$$E = T \times \frac{\text{Initial ECCR}}{\text{ICCR}_1}$$

Insurance Premiums Order 2006–2007 Amendment Order 2006

Schedule 1 Amendments

[13] Schedule 5, clause 1 (1)

Insert at the end of the subclause:

Comcare employer means an employer who:

- (a) is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth after a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority, and
- (b) would otherwise be required:
 - (i) to obtain and maintain in force a policy of insurance pursuant to section 155 of the Act, or
 - (ii) to be licensed as a self-insurer.

[14] Schedule 5

Insert at the end of the Schedule:

5 Experience premium for members of a group where another member ceases operating

Despite clause 1 of this Schedule, if an employer (*the continuing employer*) is a member of a group and, during the period of insurance for which the premium is to be calculated, another member of the group becomes a departing member, the experience premium (“E”) for the continuing employer is to be calculated using the applicable formula in clause 1, but modified as follows:

C_0 , for the calculation of the continuing employer’s premium, is to be calculated using the following formula:

$$C_0 = C_{0CE} + A \times C_{0DM}$$

C_1 , for the calculation of the continuing employer’s premium, is to be calculated using the following formula:

$$C_1 = C_{1CE} + A \times C_{1DM}$$

C_2 , for the calculation of the continuing employer’s premium, is to be calculated using the following formula:

$$C_2 = C_{2CE} + A \times C_{2DM}$$

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W_0 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$W_0 = W_{0CE} + A \times W_{0DM}$$

W_1 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$W_1 = W_{1CE} + A \times W_{1DM}$$

W_2 , for the calculation of the continuing employer's premium, is to be calculated using the following formula:

$$W_2 = W_{2CE} + A \times W_{2DM}$$

where:

A is the continuing employer's proportionate allocation of the departing member's cost of claims and wages and is calculated using the following formula:

$$A = \frac{T_{CE}}{T_G - T_{DM}}$$

C_{0CE} is C_0 as calculated for the continuing employer using clause 1.

C_{0DM} is C_0 as calculated for the departing member using clause 1.

C_{1CE} is C_1 as calculated for the continuing employer using clause 1.

C_{1DM} is C_1 as calculated for the departing member using clause 1.

C_{2CE} is C_2 as calculated for the continuing employer using clause 1.

C_{2DM} is C_2 as calculated for the departing member using clause 1.

departing member, in relation to a continuing employer's group, means an employer who:

- (a) is or was a member of that group, and
- (b) held a policy of insurance under the Act that has either expired or been cancelled and,
- (c) has not, in relation to that expiry or cancellation, become a predecessor of any other employer.

T_{CE} is the basic tariff premium of the continuing employer.

T_{DM} is the basic tariff premium of the departing member.

T_G is the sum of the basic tariff premiums of all members of the group (including the departing member).

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W_{0CE} is W_0 as calculated for the continuing employer using clause 1.

W_{0DM} is W_0 as calculated for the departing member using clause 1.

W_{1CE} is W_1 as calculated for the continuing employer using clause 1.

W_{1DM} is W_1 as calculated for the departing member using clause 1.

W_{2CE} is W_2 as calculated for the continuing employer using clause 1.

W_{2DM} is W_2 as calculated for the departing member using clause 1.

[15] Schedule 9 Input tax credit adjustment

Insert at the end of the Schedule:

3 Input tax credit adjustment for members of groups

Despite clause 1, if the employer is a member of a group:

- (a) clause 1 (b)–(e) do not apply, and
- (b) where the sum of the basic tariff premiums [T_G] for all the members of that group:
 - (i) is less than \$50,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums [T_G] would be less than \$50,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds one and a half times the value of the basic tariff premium for the employer's policy [T], the value of $[1.5 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[1.5 \times T]$ limit applies, then:

$$I = ((1.5 \times T) - Y + Q) \times B\%$$
 - (ii) is or exceeds \$50,000 but is less than \$150,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums [T_G] would be or would exceed \$50,000 but would be less than \$150,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds twice the value of the basic tariff premium for the

Insurance Premiums Order 2006–2007 Amendment Order 2006

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employer's policy [T], the value of $[2 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[2 \times T]$ limit applies, then:

$$I = ((2 \times T) - Y + Q) \times B\%$$

- (iii) is or exceeds \$150,000 but is less than \$300,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums $[T_G]$ would be or would exceed \$150,000 but would be less than \$300,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds two and a half times the value of the basic tariff premium for the employer's policy [T], the value of $[2.5 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[2.5 \times T]$ limit applies, then:

$$I = ((2.5 \times T) - Y + Q) \times B\%$$

[16] Schedule 10 Premium discount scheme

Insert after clause 2:

2A Premium discount scheme for members of groups

Despite clause 1, if the employer is a member of a group:

- (a) clause 1 (b)–(e) do not apply, and
- (b) where the sum of the basic tariff premiums $[T_G]$ for all the members of that group:
- (i) is less than \$50,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums $[T_G]$ would be less than \$50,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds one and a half times the value of the basic tariff premium for the employer's policy [T], the value of $[1.5 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[1.5 \times T]$ limit applies, then:

$$Y = \text{PDS level} \times ((1.5 \times T) + Q)$$

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- (ii) is or exceeds \$50,000 but is less than \$150,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums $[T_G]$ would be or would exceed \$50,000 but would be less than \$150,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds twice the value of the basic tariff premium for the employer's policy $[T]$, the value of $[2 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[2 \times T]$ limit applies, then:

$$Y = \text{PDS level} \times ((2 \times T) + Q)$$

- (iii) is or exceeds \$150,000 but is less than \$300,000 (or, if the period of insurance is to be less than 12 months, where the sum of the basic tariff premiums $[T_G]$ would be or would exceed \$150,000 but would be less than \$300,000 were that period of insurance to be 12 months), and if the experience adjusted premium $[(T \times (1 - S)) + (E \times S)]$ exceeds two and a half times the value of the basic tariff premium for the employer's policy $[T]$, the value of $[2.5 \times T]$ replaces the experience premium in the formula in clause 1 (a). That is, where the $[2.5 \times T]$ limit applies, then:

$$Y = \text{PDS level} \times ((2.5 \times T) + Q)$$

[17] Schedule 11

Insert after Schedule 10 and before Table A:

Schedule 11 Mine Safety Fund premium adjustment

1 General

The Mine Safety Fund premium adjustment ("M") is to be calculated in accordance with the following formula:
where:

$$M = (W_a + W_b + \dots W_n) \times R_{MSF}$$

W_a, *W_b*... *W_n* are each a part of the total wages payable to workers by the employer in respect of the period of insurance for

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which the premium is to be calculated, being a part of the total wages attributable to a class appearing in Division B of Table A (that is, classes 120000 to 152000) applicable to the employer.

R_{MSF} is 1.186%.

[18] Table A NSW WorkCover Industry Classification System

Omit “4.652%” from Column 4 of the matter relating to Class 292100 Wooden Furniture and Upholstered Seat Manufacturing.

Insert instead “5.652%”.