

WEEKLY PAYMENT OF COMPENSATION

This operational instruction provides information on the commencement, manner and timeframes for effecting payment of weekly compensation and provision of information to support the payments.

Weekly compensation payments by Employers

When weekly compensation payments are forwarded to the Employer or the Employer is authorised to commence or continue payments, the Scheme Agent must inform the Worker in writing, that they should contact the Employer to receive payment. If the Worker encounters any difficulty in getting compensation from the Employer, they should contact the Scheme Agent, who must resolve the matter or pay the Worker direct.

Regardless of the Employer's actions, it is the Scheme Agent who retains the obligation to ensure the Worker receives payments to which they are due.

Under section 69 of the 1998 Act, WorkCover can penalise an Employer for failing to forward compensation monies to an injured Worker.

Reimbursement schedule arrangements

Arrangements may exist whereby the Scheme Agent authorises the Employer to commence payments of weekly compensation to a Worker, and reimburses the Employer later. The agreement must comply with the following:

- (a) A wage reimbursement agreement:
- must only be offered to an Employer that will guarantee the financial and administrative resources to make payments of weekly compensation in a timely manner and consistent with the legislative requirements
 - must be in writing, signed by both parties and held on the underwriting file
 - must be reviewed annually at Policy renewal and the Employer must declare that reimbursements from previous periods have been claimed and no payments are outstanding.
 - must detail the procedures regarding the payment of weekly compensation to a Worker and, where applicable, any other arrangements regarding the recovery or waiving of a Claims Excess
 - must outline the Employer's requirements regarding the forwarding of Claim documentation (including Claim form, Medical Certificates, medical or legal information) and other documentation in respect of a Claim to the Scheme Agent in accordance with the requirements specified in section 69 of the 1998 Act.
 - must document that the Scheme Agent will only reimburse the Employer for payments made in accordance with the correct weekly benefit entitlement

Document name: Operational Instruction 1.2	Prepared by: Agent Operations
Version: 3.0	Issue date: November 2007
Revision: 0	Review date: November 2008
Page 1 of 4	TRIM file 2006/015663

- must outline the Scheme Agent's procedures and requirements regarding the calculation of the correct benefit entitlements and the timeliness of payments to workers, including:
 - the process whereby the Scheme Agent verifies the correct benefit entitlement
 - the requirement that the Employer must notify the Scheme Agent within seven Business Days when a Worker returns to work, or upgrades their hours or duties of work, so Scheme Agent can correctly calculate weekly benefit amount
 - the requirement that the Scheme Agent will notify the Employer within five Business Days of a change in the payment amount for weekly payments of compensation, eg. a change from section 37 to section 38/40 payments
 - must outline that if a reimbursement schedule is not submitted on time for three consecutive months or if the Employer is not compliant with the requirements specified in section 69 of the 1998 Act the Scheme Agent will implement a performance management strategy with the Employer. The agreement must be terminated and facility withdrawn if, after three months of performance management the Employer is not submitting schedules on time or the schedules are non-compliant or the Employer is in breach of section 69 of the 1998 Act.
- (b) A wage reimbursement schedule:
- must be in writing and a copy be held on each appropriate file
 - must detail the amount of the weekly compensation payment to be paid to the Worker (calculated in accordance with the Law)
 - must be submitted by the Employer to the Scheme Agent within five business days of the end of the monthly cycle or a lesser cycle as negotiated with the Scheme Agent
 - will be reimbursed by the Scheme Agent to the Employer within five Business Days from receipt of a complying schedule, subject to normal Claims administration requirements – eg. Claim duly made, Medical Certificates provided
- (c) General requirements for the management of wage reimbursement arrangements:
- Employers (or their duly authorised representatives) must provide the following information to the Scheme Agent when requesting a review of payments more than six months after the weekly compensation benefit has been paid. The Scheme Agent will review the request based on the information provided and use their soundly-based decision making model to determine if there is sufficient evidence of non-payment to warrant a review. Information required includes:
 - Claim number
 - Worker name
 - details of the weekly compensation payments made directly to the Worker by the Employer (supported by copies of payroll reports etc)
 - written statement from the Employer confirming that they have examined their financial records and have no reason to believe they have been reimbursed for the amounts paid

Document name: Operational Instruction 1.2	Prepared by: Agent Operations
Version: 3.0	Issue date: November 2007
Revision: 0	Review date: November 2008
Page 2 of 4	TRIM file 2006/015663

- details of the claim of payments not received
- written statement from the Employer confirming their compliance with section 69 of the 1998 Act and that all money claimed was paid to the Worker
- the time limit beyond which reimbursement schedules (on both open and closed Claims) will not be reviewed is six years prior to the date of request by the Employer (or their duly authorised representative)
- Nominal Insurer reserves the right to issue a direction to the Scheme Agent to recalculate hindsight premiums based on any adjustments made following the review. When responding to a request to review a wage reimbursement schedule the Scheme Agent must advise the Employer, or their duly authorised representative, that WorkCover at all times, reserves the right to recalculate premiums should it be found, having regard to information obtained under section 174 or otherwise, an amount to be due and payable by an Employer to the Scheme Agent as a Premium or balance of Premium in respect to the issue or renewal of a Policy of insurance (whether or not the Policy is still in force), WorkCover may order the Employer to pay that amount to the Scheme Agent (section 175 of the 1987 Act).
- Every six months, a Scheme Agent must forward a report to the Nominal Insurer that identifies all Employers who breach the reimbursement schedule arrangements with a summary of the actions they have implemented to remedy the breach.

Timing of payments of weekly compensation

Section 84 of the 1987 Act provides that weekly compensation is payable at the Employer's usual time of payment – at fortnightly or shorter intervals, or at intervals agreed between the Employer and the Worker. This provision extends to payments made to the children of deceased Workers.

Section 84 does not contemplate single lump sum payments. Weekly compensation payments are intended to mirror the usual payment of Wages to the Worker, and must be made at regular intervals.

A Scheme Agent must not provide a Worker with a payment of future weekly compensation payments beyond one pay cycle of their normal pay cycle in a single lump sum.

Date payment of weekly compensation was due to be made

Schedule 5 of the Deed outlines Key Performance Indicators to which a Scheme Agent must adhere in the payment of weekly compensation. Continuing weekly compensation payments due to Workers and Employers must be made within five Business Days after the date the payment was due to be made pursuant to Clause 2.2.10 (d) of the Deed.

Wage reimbursement schedule

If the Employer does have arrangements for a reimbursement schedule, the due date is five Business Days after the Scheme Agent receives the reimbursement schedule.

No wage reimbursement schedule

If a Worker has provided the necessary documentation (eg. Medical Certificate) to the Scheme Agent, the due date is the end/beginning of the next payment cycle – eg. if the Worker has been

Document name: Operational Instruction 1.2	Prepared by: Agent Operations
Version: 3.0	Issue date: November 2007
Revision: 0	Review date: November 2008
Page 3 of 4	TRIM file 2006/015663

paid continuing weekly compensation payments on a fortnightly cycle, with Wednesday the normal payment day, the Scheme Agent has five Business Days after the normal payment day to make the payment.

If an Employer does not have arrangements for a reimbursement schedule and is entitled reimbursement after paying their injured Worker continuing weekly compensation payments for a workplace Injury (and has provided the necessary documentation to the Scheme Agent), the due date is the end/beginning of the next payment cycle – eg. if the Employer has been paying their Worker continuing weekly compensation payments on a weekly cycle, with Thursday the normal payment day, the Scheme Agent has five Business Days after the normal payment day to make the payment.

Inclusion of allowances – currently weekly wage rates

The Scheme Agent is required to undertake appropriate enquiries with Workers and/or Employers and make reference to the relevant award or workplace agreement in order to establish correct wage rates for the purposes of effecting payment of weekly compensation.

With respect to the treatment of allowances, the relevant authority is the Court of Appeal matter *Lismore City Council v Garland* 26 NSWLR542. The Garland decision established certain principles to be applied when determining whether allowances should be included or excluded for the purposes of section 42 *Workers Compensation Act 1987*. Those principles are:

- If an allowance is variable or compensatory in nature to cover a special expense incurred then it should be excluded – typically this includes tool, meal and travel allowances
- If an allowance in an award is paid on a fixed hourly basis then it should be included – typically this includes productivity and competency allowances.

The Scheme Agent should apply these principles to Claims individually.

References

Workers Compensation Act 1987, sections 83, 84

Workplace Injury Management and Workers Compensation Act 1998, sections 69, 93, 267, 269, 274, 275

Deed, Schedule 2, clause 2.2.10; Schedule 5, KPI 9, 10

Operational Instruction 1.19 *Recovery of Claim Overpayments to Workers*

Document name: Operational Instruction 1.2	Prepared by: Agent Operations
Version: 3.0	Issue date: November 2007
Revision: 0	Review date: November 2008
Page 4 of 4	TRIM file 2006/015663