



ISSUING POLICIES

Section 155 of the 1987 Act requires that an employer shall obtain, and maintain in force, a policy of insurance that covers their full liability under Workers Compensation legislation.

[Note: Proposed Section 155(1AA) clarifies an employer's obligation to have only one workers compensation policy covering all of its workers.]

Provision of Immediate Cover

A Scheme Agent must initiate a policy of insurance immediately upon being contacted by an employer who does not hold a policy of insurance and is requesting a workers compensation policy to be issued. Cover is effective immediately upon contact by phone, fax, letter or email when the Scheme Agent has obtained sufficient information to:

- Identify if the employer holds a policy with another Scheme Agent or other insurer;
- confirm that there is a request for a policy of insurance to be issued or transferred;
- calculate the premium;
- issue a policy number and associated policy documentation including a proposal to new employers.

In respect of telephone requests for the issue of a policy, Scheme Agents must ensure an appropriately worded script is used and adhered to by staff to confirm the request. The text of the script should make it clear that the person making the telephone call has the appropriate authority to request insurance cover and is not simply making an enquiry.

Upon requests for coverage, Scheme Agents are required to issue policy documentation direct to employers for completion. A Scheme Agent must make adequate arrangements to allow an employer to submit the completed proposal form to the Scheme Agent by using facsimile forms or web-based solutions.

The commencement of immediate cover should not be contingent on the receipt of a signed proposal form provided sufficient information has been obtained upon request for coverage from the employer in accordance with the above points. However, Scheme Agents should take reasonable proactive steps to obtain completed proposals from new employers in all cases when coverage is commenced.

Reporting to WorkCover on policy data submissions should commence upon the calculation of the premium and issuing of the policy number and associated documentation to the employer.

It is recognised that Scheme Agent business models may involve interaction with intermediaries acting on behalf of employers. In these circumstances Scheme Agents may effect cover for employers at the request of such intermediaries, however Scheme Agents must confirm that the intermediary is actually requesting that a policy be issued on behalf of an employer, and is not simply making an enquiry. Also, Scheme Agents must ensure that the intermediary is authorised to act on behalf of the employer for the purposes of issuing a workers compensation policy. Scheme Agents must forward all original policy documentation direct to the employer.

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Web-Based Solutions for Issuing Policies

Scheme Agents may utilise web-based processes to facilitate the request and issue of a policy of insurance. At a minimum, web-based solutions in this regard should comply with the requirements of the *Electronic Transactions Act 2000* and include within the solution:

- an authentication process to verify the identity of the person and that the person consents to the process;
- a process to identify if the employer holds a policy with another Scheme Agent or other insurer; and
- a process to confirm that the authenticated person is requesting a policy of insurance to be issued or transferred and as such is agreeing to enter into a contract of insurance.

Section 9 of the *Electronic Transactions Act 2000* allows the requirement for a signature to be met in relation to electronic communication if the person is authenticated. Therefore, hard copy signed proposals from the Employer may not be required if web-based solutions are used.

Authentication of Employers

When issuing a workers compensation policy, a Scheme Agent must adopt appropriate authentication procedures to verify the status of the Employer seeking insurance. This would include, but is not limited to, determining whether the Employer is bankrupt or if the Employer has been deregistered or liquidated. Methods of authentication may include verifying the currency of the Australian Business Number (ABN) through www.abr.gov.au or the Australian Company Number (ACN) through www.asic.gov.au.

Scheme Agents must not issue a policy of insurance for a non-lawful or illegal entity. Employer requests for such policies must be referred to the Compliance Improvement Branch, WorkCover.

Certificates of Currency

If Scheme Agents have implemented and followed the practices outlined above, then it would be permissible to issue an employer a certificate of currency without yet having received a signed proposal from the employer provided that the employer has completed the prescribed certificate of currency request form.

Enforceability of Premium Debt

Scheme Agents should approach the task of issuing policies in the context of facilitating the statutory obligation on the employer to obtain and maintain in force a policy of insurance for workers compensation. Effecting immediate coverage in accordance with the above arrangements facilitates employers in meeting this obligation. On this basis the issuing of a policy should be considered in parallel to, rather than contingent on, the attainment of sufficient evidence to establish the enforceability of a premium debt.

It is anticipated that appropriate authentication and verification procedures undertaken when issuing a policy to an Employer will be sufficient to establish and enforce the premium debt. Evidentiary issues may arise in the absence of a signed proposal form or other documentation in writing, which confirms an Employer has submitted a request for insurance, or an intermediary authorised to act on behalf of an Employer. However legal opinion and case law suggest that indicators of evidence whereby Employers may be found to be the subject of contracts of insurance may include any of the following:

- a signed proposal for the policy of insurance;

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- correspondence and other records of communication such as declaration forms related to policy documentation;
- the intention of the Employer to obtain and maintain policy coverage, including evidence that there has been a request for insurance by the Employer;
- request for certificate of currency;
- the actions of the Employer where it has conducted itself on the basis that it was insured under a policy;
- confirmation that the Employer complied with all of its obligations at law as at the date of inception of the policy.

Given workers compensation insurance is compulsory for employers with substantial penalties for non-insurance, it is not expected that a significant number of enforceability issues will arise.

[Note: It is proposed that from 1 July 2008 Employers paying wages less than or equal to \$7,500 will not be required to obtain a policy of insurance unless they employ an apprentice or are a member of a group for Workers Compensation purposes.]

Reference is made to Operational Instruction 2.12 "Administration of Policies" if Scheme Agents are experiencing any difficulties in this regard. There is provision under this item to seek approval for cancellation of policies and the consequent reversal of premium.

If Scheme Agents have any particular issues with regards to specific unpaid premium debts or requests to cancel policies erroneously incepted, these should be referred to WorkCover's Appeals Branch for determination prior to referral for legal action. Such referrals should be submitted in writing to:

Manager

Appeals Branch

Locked Bag 2906

LISAROW NSW 2252

Fax (02) 9287 5502

If a Scheme Agent suspects fraudulent or non-compliant behaviour on the part of an Employer, then it should contact WorkCover's Compliance and Fraud Hotline on (02) 4321 5755.

Policies Transferring From Scheme Agent to Scheme Agent

From time to time an Employer may seek to have its policy managed by an alternative Scheme Agent. An Employer can only elect to change Scheme Agent at the conclusion of a policy period. Should an Employer elect to change Scheme Agent it is not required to complete a further proposal for insurance, as it already holds a policy of insurance with the Nominal Insurer. In this instance an Employer is required to submit to its preferred Scheme Agent a duly completed *Request to Transfer Policy Form*. This form should be submitted to the proposed Scheme Agent prior to 4pm on the day of expiry of the policy, however the transfer request form can be accepted up to two weeks after the policy expiry date. Upon receipt of the completed *Request to Transfer Policy Form* the new Scheme Agent will forward a copy to the previous Scheme Agent together with a request for policy and claim details.

An Employer will not be able to transfer its policy on renewal if a certificate of currency has already been issued for the renewal period.

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References

Workers Compensation Act 1987, section 155

Workers Compensation Regulation 2003, clauses 130, 132, 133, Form 3

Operational instruction 2.3

Operational Instruction 2.9

Operational instruction 2.12

Deed, Schedule 2, clauses 2.1.1, 2.1.2

Electronic Transactions Act 2000, section 9

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