

Cost of claims definition – Loss prevention & recovery policies

As at June 2022

For the purposes of clause 143 (1) (c) of the *Workers Compensation Regulation 2016* the **cost of claims**, in relation to a period of insurance commencing on or after 12 midnight 30 June 2022 but before 12 midnight 30 June 2023 for a policy, means the total of the costs of each individual claim of which the Nominal Insurer has notice at the time of renewal of the policy concerned, being a claim made against a particular employer with respect to an injury received (or that is deemed by the *Workers Compensation Act 1987* (the Act) or the former Act to have been received) during a prior injury year or the period of insurance, whichever is relevant, but not including any claim under section 10 (Journey claims) or section 11 (Recess claims) of the Act, or any claim or illness attributed to contracting COVID-19 in the workplace that is supported by a positive test result, or any claim or illness attributed to receiving the COVID-19 vaccination that has been evidenced as being a workplace requirement.

The cost of an individual claim (C) is to be calculated in accordance with the following formulae whether the payments were made, or the fees, expenses or costs were paid during or after the injury year or period of insurance in which the injury to which the claim relates was received (or is deemed by the Act or the former Act to have been received):

$$C = (CC \times (1 - R\%))$$

where:

C is the cost of the individual claim.

CC is \$350,000 or \$500,000 for the policy (being the large claim limit selected by the employer or group) or the sum of the following at the commencement of the period of insurance, whichever is the lesser:

- (a) the payments, if any, made by the insurer in respect of the claim pursuant to the 1987 Act or the former Act,
- (b) the payments, if any, of damages at common law and under the Compensation to Relatives Act 1897 made by the insurer either in satisfaction of judgments relating to the claim or in settlement of the claim,
- (c) fees and expenses, if any, paid by the insurer to medical practitioners, investigators or assessors in respect of the investigation of the claim,

- (d) legal costs, if any, paid by the insurer in relation to the settlement or investigation of the claim or as a consequence of proceedings at law, including any such costs that were paid to the claimant or incurred by the insurer on the insurer's own account,
- (e) the most accurate estimation for the time being of the insurer's outstanding liability reasonably likely to arise out of the claim.

However, the cost of an individual claim for LPR policies is to be reduced by-

- i. Where there has been no payment of weekly benefits (e.g. the claim is for payment of medical expenses only and there has been no time lost from work), \$500 or, if the cost of the claim is less than \$500, that lesser cost, or
- ii. Where there is time lost and the worker is entitled to and has received weekly compensation, the amount that the injured worker received in the first week of weekly compensation under the claim, up to one full week of weekly compensation.

Note: Loss Prevention & Recovery (LPR) policies commencing or renewing on or after 4pm 30 June 2016 are not subject to clause 145 of the *Workers Compensation Regulation 2016*. However, as total claims costs are included in premium calculation, icare accepts (since 30 June 2016) a reduction of claims costs as noted above.

CC does not include:

- the cost of New employment assistance payments or Education or training assistance payments;
- any amount paid or payable under section 64A (Compensation for cost of interpreter services) of the 1987 Act;
- Medical Services Panel costs;
- any amount that section 54 (4) (b) of the Workplace Injury Management and Workers Compensation Act 1998 (Second-injury scheme) requires to be excluded from the claims experience of the employer.

R% is the amount recovered, or confirmed legally recoverable from a third party, as a percentage of the total cost of an individual claim calculated using the following formula:

$$R\% = \frac{R}{TCC} \times \frac{100}{1}$$

where:

R is the sum of amounts recovered by the insurer, or confirmed legally recoverable from a third party, in relation to any individual claim however,

in any case:

- (a) does not exceed TCC, and
- (b) does not include amounts recovered under section 160 of the Act.

TCC is the total cost of an individual claim on a policy calculated in accordance with the LPR claims cost formula.

If an employer, after the renewal of a policy, requests reimbursement of any weekly compensation payments in respect of a period of incapacity before that renewal, the Nominal Insurer may adjust the amount of weekly compensation payments and re-calculate the employer's premium.

Note: Clause 143 (1) of the *Workers Compensation Regulation 2016* provides that, in any case where a single event leads to 3 or more individual claims, the total costs of all those claims in relation to that event are not to exceed the amount that is twice the relevant large claim limit for the policy.

Retrospective application of recoveries

For LPR policies, in applying a recovery, icare will generally only alter the total for claims within the most recent final adjustment calculation.

For any policy periods prior to these, alterations to costs in applying a recovery will be assessed on a case-by-case basis.

Claims subject to a recovery from a third party under CTP insurance, where a police report has been provided confirming the injured worker is not at fault, full recovery of all costs can be applied.

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